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CrI.RC.No.1138 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2023

Delivered on : 09.08.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.RC.No.1138 of 2019

C.Palanisamy

... Petitioner/Appellant/Accused

-Vs-

P.Muthuraj

... Respondent/Respondent/Complainant

Prayer:- Criminal Revision filed under Section 397 r/w. 401 of the Criminal Procedure Code, 1973, to set aside the Judgment dated 31.01.2019 made in C.A.No.81 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment dated 26.05.2016 made in C.C.No.99 of 2007 on the file of the learned Judicial Magistrate- II, Pollachi.

For Petitioner : Mr.R.Nandakumar

For Respondent : Mr.D.Jayasekar
for Mr.D.R.Arunkumar



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ORDER

This Criminal Revision is filed to set aside the Judgment dated 31.01.2019 made in C.A.No.81 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment dated 26.05.2016 made in C.C.No.99 of 2007 on the file of the learned Judicial Magistrate- II, Pollachi.

2. The learned Counsel for the Revision Petitioner/Accused submitted that the Revision Petitioner was arrayed as Accused in C.C.No. 99 of 2007 on the file of the learned Judicial Magistrate-II, Pollachi. The point of attack by the learned Counsel for the Revision Petitioner is that the statutory notice issued by the Respondent as complainant was not served on the Revision Petitioner/Accused. After filing of the complaint, after taking cognizance of the complaint by the learned Judicial Magistrate-II, Pollachi, summon was served on the Accused and the Accused appeared. On appearance, he was questioned. He disputed the claim of the Complainant stating that he had borrowed money from the Complainant and the same was repaid. At the time of borrowal, as security, he had issued a blank cheque duly signed by him. After settling



the loan the Revision Petitioner/Accused herein sought the cheque that he had entrusted to the Complainant. Instead the Complainant insisted for interest and for the claim of interest, the Complainant filed the complaint under Section 138 Negotiable Instrument Act, 1881.

3. The Complainant was examined as P.W-1. During the course of trial, the Revision Petitioner herein as Accused engaged a Counsel and cross-examined P.W-1. The defence of the Accused was put as suggestion which was denied by P.W-1 in the cross examination. Apart from P.W-1 and the Complainant's witnesses, the Accused did not enter the witness box. The learned Judicial Magistrate-II, Pollachi, on appreciation of evidence had found the Accused guilty for the offence under Section 138 Negotiable Instrument Act, 1881 and imposed sentence of one year imprisonment and compensation of Rs.2,00,000/- (Rupees Two Lakhs only) to be paid to the Complainant within three months, failing which, further three months simple imprisonment was imposed.

4. Aggrieved by the Judgment of conviction and sentence of imprisonment imposed on the Accused, the Accused had preferred Criminal Appeal before the learned III Additional District and Sessions



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Judge, Coimbatore. The learned III Additional District and Sessions

Judge, Coimbatore, by judgment dated 31.01.2019 rejected the contention of the learned Counsel for the Revision Petitioner/Appellant and confirmed the finding of the trial Court.

5. Aggrieved by the Judgment of conviction recorded by the learned Judicial Magistrate-II, Pollachi, confirmed by the learned III Additional District and Sessions Judge, Coimbatore, in the criminal appeal, the Appellant/Accused had come before this Court by filing this Criminal Revision Case.

6. The point of attack by the learned Counsel for the Revision Petitioner/Accused is that the learned trial Judge had failed to consider the fact that the Revision Petitioner/Accused had repaid the loan and the cheque issued by the Revision Petitioner/Accused as a security to the Complainant was misused. Also the learned Counsel for the Revision Petitioner/Accused invited the attention of this Court to the copy of the cheque furnished by him in the additional type set, wherein, the signature of the Revision Petitioner/Accused differs from the other particulars entered in the cheque. It is the contention of the learned Counsel for the



Revision Petitioner/Accused that the Complainant before the learned Judicial Magistrate-II, Pollachi, had filled it up. Therefore, the prior liability for which it has been sent to the bank has not been proved through proper document. The Revision Petitioner/Accused had filed Criminal Miscellaneous Petition under Section 45 of the Indian Evidence Act to compare the signature of the Accused and other particulars found in the cheque for forensic examination. The said Criminal Miscellaneous Petition filed by the Accused was dismissed by the learned Judicial Magistrate-II, Pollachi. Further, the learned Counsel appearing for the Revision Petitioner/Accused relied on the decision of the Hon'ble Supreme Court in ***Meters and Instruments Private Ltd., and Another Vs. Kanchan Mehta*** reported in ***2018 1 SCC 560*** wherein it has been held as follows:-

"20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the bank where the accused has an account, such bank, on being required, should furnish such e-mail ID to the payee of the cheque. In every summons issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the court and the complainant by e-mail, the court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is



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otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the court to explore the possibility of settlement. It will also be open to the court to consider the provisions of plea bargaining. Subject to this, the trial can be on day-to-day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need not be held up in proceedings for long unnecessarily.

21. It will be open to the High Courts to consider and lay down category of cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts may also consider issuing any further updated directions for dealing with Section 138 cases in the light of judgments of this Court. The appeals are disposed of. It will be open to the appellants to move the trial court afresh for any further order in the light of this judgment."

7. The learned Counsel for the Revision Petition/Accused submitted that the Appellate Court has the authority to convert the conviction of imprisonment into alternative of compensation under Section 357 CR.P.C. Therefore, the learned Counsel for the Revision Petitioner/Accused prays indulgence of this Court to convert the imprisonment passed by the learned Judicial Magistrate-II, Pollachi, as compensation under the revision.

8. The learned Counsel for the Respondent/Complainant vehemently objected to the line of arguments made by the learned Counsel



for the Revision Petitioner/Accused stating that the Complainant had discharged the burden upon him through proper documents as well as by adducing oral evidence. After closing of the Complainant's evidence, the burden shifted to the Revision Petitioner/Accused. The defence of the Accused is that he had repaid the entire amount. The cheque issued by him as security at the time of availing hand loan from the Respondent/Complainant was misused by the Complainant is to be proved by him. He had not entered the witness box. He had not furnished documents regarding discharge of the debt. He had not proved before the Court about when he paid and what amount he paid. Therefore, the learned Judicial Magistrate-II, Pollachi, had rejected the defence of the Revision Petitioner/Accused and had rightly on assessment of evidence, delivered judgment of conviction and sentence of imprisonment. Also the learned Judicial Magistrate-II, Pollachi, had directed the Revision Petitioner/Accused to pay the cheque amount within three months, failing which, further three months imprisonment also was imposed. The finding of the learned Judicial Magistrate-II, Pollachi, was confirmed in the appeal. Therefore, the Criminal Revision lacks merit.



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Point for consideration:

Whether the Judgment dated 31.01.2019 made in C.A.No.81 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment dated 26.05.2016 made in C.C.No.99 of 2007 on the file of the learned Judicial Magistrate- II, Pollachi is to be set aside?

9. Heard the learned Counsel for the Revision Petitioner and the learned Counsel for the Respondent. Perused the Order passed by the learned Judicial Magistrate-II, Pollachi and the Judgment passed by the learned III Additional District and Sessions Judge, Coimbatore.

10. On consideration of the rival submissions and on perusal of the Judgment of the learned Judicial Magistrate- II, Pollachi in C.C.No.99 of 2007 and the Judgment of the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.81 of 2016, the submission of the learned Counsel for the Revision Petitioner that the Revision Petitioner was not served with statutory notice cannot at all be accepted. As per the submission of the learned Counsel for the Revision Petitioner, the statutory notice was issued by the Respondent before this Court/Complainant before



the trial Court, the Accused before the trial Court, the Revision Petitioner herein did not accept the service of notice and he refused to accept it.

Therefore, the notice was returned to the Respondent.

11. When the Accused refused to receive the notice sent by the Complainant, it was returned to the Complainant with an endorsement “refused by the addressee”. Had he received it, he had the opportunity to offer his explanation as reply notice. Therefore, by his conduct, he refused. Refusal of notice is treated as having knowledge of notice is the practice followed by the Courts, particularly, trial Courts based on the decisions of the Hon'ble Supreme Court. Therefore, the Accused cannot claim ignorance of statutory notice. The submission of the learned Counsel for the Revision Petitioner that the Accused did not receive notice is rejected. The refusal to receive notice is treated as sufficient knowledge of notice. It is presumed service. Therefore, the submission of the learned Counsel for the Revision Petitioner is rejected.

12. The second limb of argument is that the Accused had given blank cheque signed as a security at the time of borrowal of money from the Respondent. He had repaid the entire amount borrowed by him and



sought return of duly signed blank cheque handed over to the Complainant

by the Accused. The Complainant refused to part with the cheque stating

that the Accused has to pay interest for the amount that he borrowed.

When the Accused refused to pay the amount, the Complainant approached

the Court of the learned Judicial Magistrate filed complaint and gave

statement to the learned Judicial Magistrate-II, Pollachi, based on which

the Complaint was taken on file and cognizance of the offence under

Section 138 of Negotiable Instruments Act, 1881, was taken by the learned

Judicial Magistrate-II, Pollachi. When the summons were served on the

Accused, the Accused received the summon and entered appearance. On

appearance before the learned Judicial Magistrate-II, Pollachi, the

Accused was furnished with copy of the complaint under Section 207 of

Cr.P.C. Since the Accused denied the contents of the complaint, the

learned Judicial Magistrate-II, Pollachi had ordered trial. The complainant

himself had examined as P.W-1 and marked documents. Except the

complaint of the complainant side witness and documents, there were no

other witnesses. Once the complainant had adduced evidence, the burden

shifts on the Accused to disprove the case of the complainant. The

Accused had the opportunity to furnish documents in his favour for

repayment of the entire balance of loan. He had not done so. He had not



filed any document as proof of repayment of the loan alleged to have been

extended to by the Respondent/Complainant. After the complainant

evidence was closed, it is the duty of the Accused to enter the witness box

and give rebuttal evidence. He had not done so. Therefore, the Court can

draw adverse inference against the contention of the Accused. When the

Accused had not examined himself by adducing evidence as rebuttal

evidence, the presumption in favour of the Complainant is available before

the Court, particularly, when the signature on the cheque is accepted, the

borrowal is accepted. Therefore, the learned Judicial Magistrate-II,

Pollachi, had properly analysed the evidence and arrived at a conclusion

that the Accused had failed to repay the amount and therefore, the cheque

was presented to the bank by the complainant. The cheque was returned

with endorsement “insufficient funds”. Therefore, statutory notice was

issued and the statutory notice was refused wantonly by the Accused.

Those circumstances are weighed by the learned Judicial Magistrate-II,

Pollachi. The learned trial Judge had drawn adverse inference against the

conduct of the Accused. This presumption is available to the Court under

Section 114 of the Indian Evidence Act, which is based on the materials

available before the Court. Here the Court can draw adverse inference

against the conduct of the Accused in avoiding to enter the witness box to



prove his contention. Therefore, the learned Judicial Magistrate-II,

Pollachi had passed a well considered order. On re-appreciation of the same evidence, the learned III Additional District and Sessions Judge, Coimbatore, had also confirmed the finding recorded by the learned Judicial Magistrate-II, Pollachi. Under those circumstances, the attempt of the learned Counsel for the Revision Petitioner/Accused to exercise discretion of the Hon'ble High Courts by directing the Revision Petitioner/Accused to deposit the amount towards compensation for the Complainant instead of dismissing the revision is found unacceptable. The submission of the learned Counsel for the Revision Petitioner to modify the order of sentence of imprisonment and compensation passed by the learned Judicial Magistrate-II, Pollachi, is unacceptable as the power of this Court cannot be misused at the whims and fancies of the Accused before the trial Court.

13. As observed in the decision of the Hon'ble Supreme Court in **2001 (8) SCC 458 [K.N.Beena Vs. Muniappan and Another]** where the Hon'ble Supreme Court had deprecated the practice of the Courts both trial Court as well as the Revision Courts in ignoring the parliamentary intent in enacting Section 139 of Negotiable Instrument Act, wherein, specifically



imposed the sentence of imprisonment and the fine or compensation of the cheque amount. In the facts of this reported case, the trial Court imposed fine of Rs.5,000/- on the ground the Magistrate does not have the power to impose fine more than Rs.5,000/-. Instead of sentence of imprisonment, sentence of imprisonment till raising of the Court alone was imposed which was confirmed in the Appeal. Again, in the Revision Court, the order of the learned trial Judge was confirmed by the High Court. Therefore, The Hon'ble Supreme Court deprecated the practice. If the submission of the learned Counsel for the Revision Petitioner/Accused is accepted, then the Hon'ble Supreme Court deprecating the practice has to be invoked here once again which cannot be allowed.

14. In the light of the above discussions, the point for consideration is answered in favour of the Respondent and against the Appellant. The Judgment dated 31.01.2019 made in C.A.No.81 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment dated 26.05.2016 made in C.C.No.99 of 2007 on the file of the learned Judicial Magistrate- II, Pollachi is not found perverse and the same is to be confirmed.



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In the result, this ***Criminal Revision is dismissed*** as having no merits. The Judgment dated 31.01.2019 made in C.A.No.81 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment dated 26.05.2016 made in C.C.No.99 of 2007 on the file of the learned Judicial Magistrate- II, Pollachi is confirmed.

The learned Judicial Magistrate-II, Pollachi is directed to issue warrant against the Appellant/Accused to secure him and detain him in Prison to undergo the period of sentence already imposed on him.

09.08.2024

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Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate- II,
Pollachi.
- 3.The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

srm

Order made in
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