



Crl.R.C.No.1420 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1420 of 2024

and

Crl.M.P.Nos.11966 & 11967 of 2024

P.Palaniappan

... Petitioner/Accused

Versus

P.Shanmugam

... Respondent/Complainant

PRAYER : Criminal Revision petition filed under Sections 397 r/w. 401 of Cr.P.C., praying to set aside the order dated 04.07.2024 made in C.A.No.16 of 2023 on the file of the Principal Sessions Judge, Dharmapuri confirming the conviction and sentence dated 09.01.2023 made in S.T.C.No.43 of 2020 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Dharmapuri.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.N.Umapathi

ORDER

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This revision petition has been filed seeking to set aside the order dated 04.07.2024 made in C.A.No.16 of 2023 on the file of the learned



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Principal Sessions Judge, Dharmapuri confirming the conviction and sentence dated 09.01.2023 made in S.T.C.No.43 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Dharmapuri.

2.The petitioner/accused was convicted by the trial Court in S.T.C.No.43 of 2020 by judgment dated 09.01.2023 for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay the cheque amount of Rs.3,00,000/- within a period of two months from the date of the judgment, failing which, to undergo default sentence of simple imprisonment of another six months. Aggrieved against the same, the petitioner preferred an appeal before the learned Principal Sessions Judge, Dharmapuri in C.A.No.16 of 2023. The learned Sessions Judge, by judgment dated 04.07.2024, dismissed the appeal confirming the conviction and sentence of the trial Court, against which, the present revision is filed.



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3.The gist of the case is that he respondent/complainant came in acquaintance with the petitioner through his friend Tamilselvan, who is running hotel business. The petitioner borrowed a sum of Rs.3,00,000/- on 05.01.2020 for his business needs and family expenses in the presence of said Tamilselvan. The petitioner agreed to repay the same within a period of one month and for this one month period promised to pay interest at the rate of Rs.1.50 per Rs.100/- on 09.02.2020. The respondent/complainant thereafter approached the petitioner/accused and demanded repayment of loan amount of Rs.3,00,000/- and interest of Rs.4,500/-. In discharge of the said liability, the petitioner issued cheque bearing No.325401 dated 10.02.2020 drawn on Indian Bank, Konganapuram Branch for the principal amount. When the cheque was presented, the same returned unpaid for the reason “Funds Insufficient”. Thereafter statutory notice issued, petitioner received statutory notice. Thereafter, he neither replied nor repaid the borrowed amount. Thereafter following statutory condition, the a compliant was filed.



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4.During trial, the respondent examined himself as PW1 and Tamilselvan as PW2 and marked Exs.1 to 5. The petitioner examined one Palanisamy as DW1 and himself as DW2 and marked Ex.D1. The trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.

5.The primary contention of the petitioner is that the respondent/complainant is not known to him, he is a total stranger. The petitioner had chit transaction in DNC Chits and the said Tamilselvan for the purpose of chit, took the petitioner to bank and opened bank account and collected the cheque book and signed cheques from the petitioner as security in the DNC chits. Thereafter, the respondent using six cheques have presented as though a private loan transaction was there in between the respondent and petitioner. He further submitted that the cheque was not given for any liability. To prove the same, he examined in detail the respondent as well as PW2 and also DW1/his friend and himself as DW2. The petitioner



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had probalised his defense but the Courts below not considered the same.

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Hence, sought for allowing the revision and discharge the petitioner from the above case.

6.The learned counsel for respondent/complainant submitted that the complainant is doing real estate business as well as PW2/Tamilselvan and they had good relationship. Through Tamilselvan, the petitioner came in contact with the respondent. Petitioner is running a hotel business and for development of his business he sought for a loan of Rs.3,00,000/- and agreed to pay interest. On the promise and assurance given by the petitioner, the respondent gave a loan of Rs.3,00,000/-, thereafter in discharge of the loan, the petitioner gave a cheque, which got dishonoured and case was filed. Though lengthy cross examination was made by the petitioner, he could not collect any evidence in his favour. PW2/Tamilselvan confirms the transaction between the respondent and petitioner. In this case, PW2 denied the defence of the petitioner. Petitioner joining DNC Chits, opening of bank account and



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cheques with PW2 were all denied by PW2. Thereafter in the defence evidence, DW1 and DW2 could not prove or probabalise any fact in support of their defence. Both the Courts below had rightly rejected the same. At the stage of revision, the petitioner cannot seek re-appraisal of evidence, it is not a Court of fact. Further the petitioner could not show any perversity or wrong finding by the Courts below, which needs interference. Hence, prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is seen that both the Courts below convicted the petitioner for offence under Section 138 of the Negotiable Instruments Act. The petitioner admits his signature in the cheque and takes a defence that the cheque was handed over to one Tamilselvan/PW2. In this case, for the purpose of DNC Chit except making oral statement no other materials produced. The petitioner not denied the signature and the cheque issued. In fact, PW2 reaffirms and confirms about the loan given by the respondent to the



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petitioner and the petitioner issuing the cheque, which cuts the root of the defence attempted to be taken by the petitioner. Both the Courts below on the evidence of witnesses and materials produced had rightly convicted the petitioner. This Court finds no reason to interfere with the same. Hence, the Criminal Revision Case is dismissed.

8.The trial Court is directed to issue conviction warrant and ensure the petitioner/accused is secured and undergo the sentence and conviction imposed against him without any delay. Consequently, connected criminal miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/No
Speaking / Non-speaking order
Neutral citation : Yes/No
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M.NIRMAL KUMAR, J.

rsi

To

- 1.The Principal Sessions Judge,
Dharmapuri.
- 2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Dharmapuri.
- 3.The Public Prosecutor,
High Court, Madras.

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