



CrI.R.C.No.872 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

CrI.R.C.No.872 of 2019 and
CrI.M.P.No.6492 of 2024

Vincent Suresh Babu

... Petitioner / Accused

Vs.

1. The State by
Public Prosecutor,
Coimbatore.

2. Rafi Ahamed

... Respondent / Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Criminal Procedure Code, to set aside the Judgment and orders, dated 15.07.2019 in C.A.No.175/2018 passed by the I Additional District and Sessions Judge, Coimbatore, confirming the Judgment and orders, dated 13.04.2018 in C.C.No.254/2017 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.

For Petitioner : Mr.N.Baskaran

For Respondents

For R1 : Mr.S.Raja Kumar,
Additional Public Prosecutor

For R2 : Mr.N.Vijaya Baskar for
M/s.Law Vision



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ORDER

Challenging the conviction and sentence passed by the Courts below, the present Criminal Revision is filed by the petitioner/Accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the complainant in a nutshell is as follows :

- i. The accused is doing construction business in the name and style M.S.Property Developers and he approached the complainant and requested him to invest a sum of Rs.50,00,000/- in his company and also assured that profit would be shared proportionately.
- ii. In this regard, a Memorandum of understanding (Ex.P1) was entered into between the complainant and the accused on 30.07.2010. Accordingly, the complainant paid a sum of Rs.25,00,000/- on various dates as detailed hereunder:



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<i>S.No.</i>	<i>Date</i>	<i>Mode</i>	<i>Amount</i>
1	30.07.2010	Cheque	Rs.1,00,000/-
2	07.08.2010	Cheque	Rs.5,00,000/-
3	11.08.2010	Cheque	Rs.4,75,000/-
4	22.09.2010	Cash	R.5,00,000/-
5	22.09.2010	Cash	Rs.4,25,000/-
6	22.09.2010	Cash	Rs.5,00,000/-
Total			Rs.25,00,000/-

- iii. The accused did not commence construction activities and promised the complainant that he would be paying a sum of Rs.20,000/- per month towards compensation. However, he did not keep up to his promise.
- iv. After much persuasion by the complainant, the accused issued a post dated cheque bearing No.434466, dated 25.05.2011 (Ex.P6) for a sum of Rs.10,00,000/- drawn on Indian Overseas Bank, Race Course Branch, Coimbatore in favour of the complainant.
- v. Subsequently, the accused issued a legal notice on 23.05.2011 (Ex.P12) contending that the complainant had cheated him.



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- vi. Therefore, a Panchayat was convened on 30.05.2011 and a compromise was entered into between the parties. Accordingly, the accused issued another cheque bearing No.434473, dated 08.08.2011 (Ex.P8) for a sum of Rs.15,00,000/- drawn on Indian Overseas Bank, Race Course Branch, Coimbatore in favour of the complainant.
- vii. When the cheques were presented for collection by the complainant through his bankers viz., Indian Overseas Bank, Race Course Branch, Coimbatore, on 12.09.2011, they were returned for the reason 'insufficient funds' as is evidenced by the cheque return memos, dated 12.09.2011 (Ex.P10 and Ex.P11).
- viii. Thereafter, the complainant issued a statutory notice, dated 10.10.2011 (Ex.P12) to the accused calling upon him to pay the amount due under the cheques (Ex.P6 and Ex.P8) within fifteen days from the date of receipt of the notice.
- ix. The accused received the notice as is evidenced by the postal acknowledgment Card (Ex.P13), but did not come forward to make good the payment. However, he sent a reply on 22.10.2011,



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(Ex.P14) which according to the complainant contained false allegations.

- x. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.254/2017.
- xi. The learned Judicial Magistrate, took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.
- xii. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.
- xiii. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P14.
- xiv. The accused, when questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence



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against him, denied of having committed any offence. No witness was examined on the side of the accused.

xv. After full contest, the learned Judicial Magistrate, vide his Judgment dated 13.04.2018, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for a period of one year and to pay the cheque amount of Rs.25,00,000/- as compensation along with interest at the rate of 6% per annum from the date of the cheque, within a period of one month, in default to undergo Simple Imprisonment for a period of three months.

xvi. Aggrieved over the same, the accused filed an appeal in C.A.No.175/2018 before the I Additional District and Sessions Judge, Coimbatore.

xvii. The learned I Additional District and Sessions Judge, Coimbatore, after analysing the evidence on record, confirmed the findings recorded by the trial Court and dismissed the appeal, as against which, the present Criminal Revision Case is filed by the accused.



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4. Heard Mr.N.Baaskaran, learned counsel for the petitioner and Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the 1st Respondent and Mr.N.Vijaya Baskar, learned counsel for the 2nd Respondent.

5. At the outset it may be observed that the accused did not deny his signature on the cheques (Ex.P6 and Ex.P8). Once the signature is admitted, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act, unless the contrary is proved.

6. In the instant case, the defence taken by the accused is that the complainant invested a sum of Rs.10,00,000/- in his firm and that the cheque dated 08.08.2011 (Ex.P8) was obtained in the Police Station under threat and coercion. According to him the compromise agreement, dated 25.05.2011 (Ex.P9) itself was entered into in presence of the Police Officials. Both the Courts below had analysed the above aspects and had concurrently held that the accused has not rebutted the presumption by way of adducing acceptable evidence. This Court while exercising



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revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court unless the conviction and sentence passed by both the Courts below are totally perverse.

7. A perusal of the records shows that the accused had received a sum of Rs.25,00,000/- by way of three cheques and also by cash on different dates from 30.07.2010 to 22.09.2010. Subsequently, he had issued a Cheque on 25.05.2010 (Ex.P6) for a sum of Rs.10,00,000/- and on presentation it got dishonoured. According to the complainant, a Panchayat was convened on 30.05.2011 and in the said Panchayat, the accused issued another cheque, dated 08.08.2011 (Ex.P8) for a sum of Rs.15,00,000/- drawn on Indian Overseas Bank, Race Course branch, Coimbatore and the said Cheque (Ex.P8) also got dishonoured. However, the accused had lodged a Police complaint against the complainant, for which an FIR in Crime No.1121/2011 was registered against the present complainant for an offence punishable under Section 420 I.P.C.,



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8. The learned counsel for the complainant contended that the complainant filed Crl.O.P.No.17692 of 2015 to quash the FIR before this Court and the said petition was disposed of on 14.02.2019, since, the Police had filed a referred charge sheet before the concerned Judicial Magistrate treating the same as 'mistake of fact'. In the circumstances, the contention of the accused that the Cheque (Ex.P8) was obtained from him in the Police Station under threat and coercion cannot be accepted.

9. Another contention of the accused is that the complainant paid only a sum of Rs.10,00,000/- to him and not Rs.25,00,000/- as alleged by him.

10. The accused himself had issued two cheques (Ex.P6 and ex.P8) for Rs.10,00,000/- and Rs.15,00,000/- respectively and he had not disputed his signatures on the cheques. Moreover, the Police complaint given by him against the complainant was treated as mistake of fact and in the circumstances, the presumption under Section 139 of the Negotiable Instruments Act is in favour of the complainant. The accused



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has not rebutted the said presumption. In the facts and circumstances, all the observations made by both the Courts below are perfectly in order.

11. As regards the sentence, Mr.N.Baaskaran, learned counsel for the petitioner/accused contended that the accused has already paid a sum of Rs.12,50,000/- and he is ready to pay the balance amount of Rs.17,50,000/-, within a period of one month and prayed for showing some leniency in imposing the sentence. He also undertook to file an affidavit in this regard.

12. Considering the same, the sentence passed by the trial Court is modified as under:

“The accused is sentenced to pay a sum of Rs.17,50,000/- (Rupees Seventeen Lakhs Fifty Thousand only) towards compensation to the complainant within a period of one month from the date of receipt of a copy of this order, in default to undergo Simple Imprisonment for a period of six months”



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13. In the result,

- i. the Criminal Revision Case is Partly allowed;
- ii. the conviction of the accused for the offence punishable under Section 138 of the Negotiable Instruments Act passed in C.A.No.175 of 2018 and C.C.No.254/2017 is confirmed.
- iii. The accused is sentenced to pay a sum of Rs.17,50,000/- (Rupees Seventeen Lakhs Fifty Thousand only) towards compensation to the complainant within a period of one month from the date of receipt of a copy of this order, in default to undergo Simple Imprisonment for a period of six months.
- iv. If the compensation is not paid within a month, the trial Court shall take appropriate steps to secure the presence of the accused for serving the sentence.

Consequently, connected miscellaneous petition is closed.

23.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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R. HEMALATHA, J.

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To

- 1.The I Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level-II,
Coimbatore.

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