IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

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

Crl.R.C.No.890 of 2019

S.B.Parthiban ... Petitioner / Accused

Vs.

K.Raman ... Respondent / Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders, dated 04.04.2019 passed by the learned IV Additional District and Sessions Judge, Coimbatore in C.A.No.113 of 2017, confirming the Judgment and orders, dated 24.04.2017 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, in C.C.No.127/2011.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mrs.R.Meenal

ORDER

Challenging the Judgment and Orders, dated 04.04.2019 passed in C.A.No.113 of 2017 by the learned IV Additional District and Sessions Judge, Coimbatore, confirming the conviction and sentence passed by the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, dated 24.04.2017 in C.C.No.127/2011, 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.

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

i. The complainant and the accused are family friends for the past 10 years. The accused borrowed a sum of Rs.1,50,000/- from the complainant and executed a Promissory note on 09.12.2008 (Ex.P1) promising to repay the principal together with interest @ 9% per annum. However, the accused did not pay any amount either towards principal or interest.

ii. After much persuasion by the complainant, the accused issued a cheque bearing number 586611 dated 16.08.2010 (Ex.P2) drawn on Oriental Bank of Commerce, Vysial Street, Coimbatore, for a sum of Rs.1,73,063/-.

iii. When the complainant presented the said cheque for collection on 17.08.2010 and 30.08.2010 through his banker viz., ADUC Bank, the same was returned on 18.08.2010 and 31.08.2010 for the reason “Funds Insufficient”, as is seen from the cheque Return memos (Ex.P3 and Ex.P4).

iv. Therefore, the complainant issued a statutory notice dated 02.09.2010 (Ex.P5) to the accused calling upon him to pay the amount due under the cheque.

v. Though the accused received the said statutory notice on 04.09.2010, as is evidenced by the postal acknowledgement card (Ex.P6), he did not come forward to make good the payment and did not also send any reply.

vi. Therefore, the complainant filed a private complaint against the accused under Section 200 Cr.P.C. before the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore in

C.C.No.127/2011.

vii. 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.

viii. On the appearance of the accused, the copies of the case 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.

ix. On the side of the complainant, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P10.

x. When the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. The accused examined himself as D.W.3 and two other witnesses as D.W.1 and D.W.2 and marked Ex.D1.

xi. After full trial, the learned Judicial Magistrate, vide his judgment dated 24.04.2017 convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for One year and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for two months.

xii. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.113 of 2017 before the IV Additional District and Sessions Judge, Coimbatore;

xiii. The learned IV 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.

4. Heard Mr.B.Gopalakrishnan, learned counsel for the Revision petitioner and Mrs.R.Meenal, learned counsel for the Respondent.

5. At the outset it may be observed that the accused did not deny his signature either on the cheque (Ex.P2) or on the promissory note (ExP1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved.

6. Mr.B.Gopala Krishnan, learned Counsel for the revision petitioner would contend that the complainant and the revision petitioner were doing Real Estate Business and that the sum of Rs.1,50,000/- was paid for securing a Government Job for one of the relatives of the complainant. However, though this transaction took place during 2006, the pronote was obtained only in the year 2008 and the attestors of the pronote were not examined by the complainant.

7. Per contra, Mrs.R.Meenal, learned counsel appearing for the Respondent would contend that both the Courts below after analysing the evidence on record in proper perspective, had convicted and sentenced the accused and there is no reason for this Court to interfere with the same.

8. In the instant case, the revision petitioner, though received the statutory notice dated 02.09.2010 (Ex.P5), did not send any reply to the complainant. The contention of the accused that a sum of Rs.1,50,000/- was paid only for getting a Government Job for one Soundararajan a relative of the complainant, has not been substantiated by adducing acceptable evidence. A pronote does not require attestation and in any event, this is not a suit based on a promissory note. In the instant case, the accused has not denied his signature on the cheque. The disputed cheque got dishonoured for insufficiency of funds as is seen from the cheque Return Memos (Ex.P3 and Ex.P4) and therefore, an offence under Section 138 of the Negotiable Instruments Act is clearly attracted. The appellate Court in its Judgment dated 04.04.2019 had observed thus:

> *"12. The evidence of P.W.1 together with Ex.P.3 and Ex.P.4 would prove the dishonour of the impugned cheque Ex.P.2 on 18.08.2010 and on 31.08.2010 respectively for the reasons of 'funds insufficient'. The failure of the accused to give any 'stop payment' instruction to his bankers immediately after the 1[a] presentation of the cheque for collection on 18.08.2010 itself is suffice to prove that there was no such occasion as*

alleged by the accused with respect to the complainant taking away the cheques from his office and misusing the same, due to the misunderstanding between them, in view of the loss in the real estate business conducted by the complainant and the accused together, especially when the very joint venture business itself is not proved. In short, Ex.P.3 and Ex.P.4 together with the evidence of P.W.1 prove the dishonour of the cheque for the reason of 'funds insufficient' when it was presented for collection on 18.08.2010 and at the request of the accused on 31.08.2010 Ex P.5 together with the evidence of P.W.1 would prove that the legal notice has been issued within 30 days from the date of the return of the cheque itself. It is already seen that the accused has not issued any reply notice, inspite of his receiving legal notice on 04.09.2010. It is not the case of the accused that he has made any payment towards the cheque Ex.P.2. While so, it remains unpaid within the grace period of 15 days or thereafter. Further, the suit in OS 651/11 and the legal notice issued on 01.02.2016 under Ex.P.9 and on 1.12.2016 under Ex.P.10 would prove the cheque remaining unpaid until 2016. Judicial notice is taken to the fact that there has been a compromise wherein the accused has agreed to pay cash towards the impugned cheque, but, later failed to *make good the loss. Thus, all the ingredients required to constitute an offence u/s.138 of NI Act remains proved and the accused is found guilty of the offence and hence this court does not find any infirmity in the Judgment of the trial court."*

9. In the circumstances, the conviction and sentence passed by both the Courts below, cannot be said to be perverse and therefore, the Criminal Revision Case is liable to be dismissed as devoid of merits.

10. In the result,

i. the Criminal Revision Case is dismissed.

ii. the Judgment dated 04.04.2019 in C.A.No.113 of 2017 passed by the IV Additional District and Sessions Judge, Coimbatore and the Judgment dated 24.04.2017 in C.C.No.127/2011 passed by the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, are confirmed.

iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

12.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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To

1.The IV Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
Fast Track Court at Magisterial Level - II,
Coimbatore.

R. HEMALATHA, J.

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