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CrI.R.C.No.971 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

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

CrI.R.C.No.971 of 2019

Tr.A.N.Selvarathinam

... Petitioner

Vs.

Tr.K.Govindaraj

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders passed in C.A.No.323 of 2018, dated 10.07.2019 by the XVI Additional Sessions Judge, Chennai, confirming the conviction and sentence passed by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai -15, in C.C.No.10018/2010, dated 26.04.2018.

For Petitioner : Mr.L.Rajendran

For Respondents : Notice unserved



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ORDER

Challenging the Judgment and Orders, dated 10.07.2019 passed in C.A.No.323 of 2018 by the learned XVI Additional Sessions Judge, Chennai, confirming the conviction and sentence passed by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai -15, in C.C.No.10018/2010, 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 case of the complainant in a nutshell is as follows:

- i. The complainant is running an old scrap-material shop and the respondent/accused borrowed a sum of Rs.1,30,000/- from him during January-March 2009 in three stages promising to repay the said amount with interest.



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- ii. When the complainant demanded the accused to repay the amount with interest, the accused did not pay any amount and after much persuasion, he handed over two post dated cheques, drawn on Indian Bank, Ashok Nagar Branch, Chennai bearing numbers 463621 and 507240 and both dated 01.03.2010 (Ex.P1 and Ex.P2) for Rs.10,000/- and 1,00,000/- respectively.
- iii. When the cheques were presented for collection on 03.03.2010 by the petitioner/complainant through his banker namely Axis Bank Ltd, Virugambakkam Branch, the same were returned for the reason 'funds insufficient', as is seen from the cheque return memos (Ex.P3 and Ex.P4).
- iv. Thereafter the complainant issued a legal notice dated 06.03.2010 (Ex.P5) to the accused demanding the latter to pay the amount due under the cheques (Ex.P1 and Ex.P2).
- v. The revision petitioner / accused sent a reply notice on 10.03.2010 (Ex.P7) which, according to the complainant, contained false allegations.



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- vi. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., in C.C.No.10018/2010 before the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.
- vii. The learned Metropolitan Magistrate took cognizance of the offence, issued summons to the accused under Section 204 Cr.P.C. and on his appearance, furnished copies of records under Section 207 Cr.P.C., The substance of accusation was put to the accused and since the accused pleaded not guilty, the case was posted for trial.
- viii. In order to bring home the guilt of the accused, the complainant examined himself as P.W1 and marked Ex.P1 to Ex.P7.
- ix. Thereafter the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 (i) (b) Cr.P.C, and the accused denied of having committed any offence. The accused examined himself as D.W.1 and marked Ex.D1 to Ex.D6.
- x. After full trial, the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, vide his Judgment dated 26.04.2018,



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found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment for a period of six months and to pay the cheque amount as compensation to the complainant under Section 357 of Cr.P.C.

xi. Aggrieved over the same, the revision petitioner / accused filed an appeal in C.A.No.323 of 2018 before the XVI Additional Sessions Judge, Chennai.

xii. The learned XVI Additional Sessions Judge, Chennai, vide his Judgment dated 10.07.2019, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court, aggrieved over which, the present revision is filed by the accused.

4. At the outset, it may be observed that the revision petitioner / Accused did not deny his signature on the cheques (Ex.P1 and Ex.P2), dated 01.03.2010. Once the signature is admitted, there is a presumption under Section 118 and 138 of the Negotiable Instruments Act, unless the contrary is proved.



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5. Mr.L.Rajendran, learned counsel for the Revision petitioner contended that the present revision petitioner joined a Chit Fund floated by one Muthuraj and handed over to him eight signed blank cheques drawn on ICICI Bank. According to him, the complainant who is employed under Muthuraj had misused two of the eight cheques for the purpose of filing the private complaint in C.C.No.10018/2010. He also drew the attention of this Court to Ex.D5 notice issued to Muthuraj in which it is specifically mentioned that the Cheques bearing numbers.463621 and 507240, dated 01.03.2010 drawn on Indian Bank, Ashok Nagar Branch, Chennai were handed over to the Proprietor Muthuraj, Srinidhi and Co.

6. However, it is seen from the records that the Revision petitioner did not examine the said Muthuraj to whom eight cheques were allegedly given by him. The contention of the learned counsel for the revision petitioner is that a petition was filed to examine the said Muthuraj and though the same was allowed by the trial Court Judge, the



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said Muthuraj did not appear before the Court. However, the revision petitioner did not take steps to secure the presence of the said witness.

7. In any event, it is pertinent to point out that even after issuance of the notices Ex.D3 and Ex.D5 to Muthuraj, the present Revision Petitioner did not initiate any action against the latter for not returning the cheques to him. No Police complaint was lodged against him. These aspects were considered by both the Courts below and in fact, the learned trial Court Judge in his orders, had observed thus:

"9.....

Even Ex-D3 dated 25.2.2010 the accused failed to mention these two case cheques which belongs to Indian Bank account. It is admitted by the accused there is already enmity between the accused and Muthuraj. From Ex-D3 clearly shows that Muthuraj threatened the accused with rowdy elements that he would misuse the blank cheques. If it be so the accused ought to have mention these disputed two cheques in his notice Ex-D3. Non mentioning of these alleged two case cheques Ex-P1 and Ex-P2 in the Ex-D3 notice creates doubt in the defence



case.

Ex-D5 dated 4.3.2010 notice issued by the accused to one Muthuraj claiming that he has to return the alleged case cheques Ex-P1 and Ex-P2. Ex-D6 is the acknowledgement card shows that Muthuraj received Ex-D5 notice. There is no postal receipt to show that the notice Ex-D5 was despatched on 4/3/2010. Even on perusal of Ex-D6 acknowledgement card the postal seal affixed bears date 23/2/2010 High court building, Chennai. The case cheques presented on 3/3/2010 and it was returned on 4/3/2010. It may also presume that the accused after knowing the return of cheque from the bank he may issued Ex-D5 notice mentioning its date as 4/3/2010. From the defence case it shows that the accused verywell knows that the cheque Ex-P1 and Ex-P2 are in possession with the third party Muthuraj. If it be so what prevented the accused to issue stop payment instruction to his banker mentioning that Muthuraj would misuse the alleged case. It is not suggested to the complainant that complainant had any enmity towards the accused. Even the complainant and Muthuraj are related, due to that



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relationship complaint is dancing to tune of Muthuraj is also not proved by the accused. Strict proof is not necessary on the part of the accused, preponderance of probability is enough. The accused cannot take bald defence. The defence seems to be doubtful."

8. All the observations made by the trial Court Judge are in order. It is settled law that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate Court. There is nothing on record to conclude the concurrent findings recorded by both the Courts below are perverse.

9. In the result,

- i. the Criminal Revision Case is dismissed;
- ii. the Judgment dated 10.07.2019 in C.A.No.323 of 2018 passed by XVI Additional Sessions Judge, Chennai and and the Judgment dated 26.04.2018 in C.C.No.10018/2010 passed by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai -15, are confirmed;
- iii. The Revision Petitioner / accused is directed to surrender before the



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trial Court viz., the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai -15, 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;

02.04.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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To
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- 1.The XVI Additional Sessions Judge, Chennai.
- 2.The Metropolitan Magistrate,
Fast Track Court-III, Saidapet, Chennai -15



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R. HEMALATHA, J.

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