



Crl.R.C.No.959 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

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

Crl.R.C.No.959 of 2019

and

Crl.M.P.Nos.13594 and 13595 of 2019

C.P.Mouleeswaran

... Petitioner

vs.

P.Baskaran

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the judgment and orders dated 17.07.2019 passed in C.A.No.240 of 2018 by the II Additional District and Sessions Judge, Erode District confirming the judgment and orders dated 07.07.2018 passed in S.T.C.No.479 of 2017 by the learned Judicial Magistrate, Fast Track Court No.I, Erode.



CrI.R.C.No.959 of 2019

WEB COPY

For Petitioner : Ms.S.Varshini
Legal Aid Counsel

For Respondent : M/s.D.Jagajothi
for Mr.V.Balamurugane

ORDER

Challenging the conviction and sentence passed by the II Additional District and Sessions Judge, Erode in C.A.No.240 of 2018, dated 17.07.2019, confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.479 of 2017, dated 07.07.2018, the present Criminal Revision case is filed by the 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 rank in the present criminal revision would also be indicated.

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



CrI.R.C.No.959 of 2019

WEB COPY

The revision petitioner/accused borrowed a sum of Rs.72,616/- from the respondent/complainant on 23.10.2016 and in order to discharge the said amount, the accused issued a post dated cheque (Ex.P1) bearing No.104234, dated 20.01.2017 drawn on IndusInd Bank, Mettur Road, Erode Branch for a sum of Rs.72,616/- to the respondent/complainant. When the cheque was presented by the complainant for collection on 21.03.2017 through his banker viz., Indian Overseas Bank, Sampath Nagar, Erode, the same was returned on 22.03.2017 for the reason "Funds Insufficient", as is seen from the cheque return memo (Ex.P2). Thereafter, the respondent/complainant issued a legal notice dated 04.04.2017 (Ex.P3) to the revision petitioner/accused demanding the latter to pay the amount due under the Cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 05.04.2017, as is evidenced by the postal acknowledgement card (Ex.P4), he did not come forward to make good the payment.



CrI.R.C.No.959 of 2019

WEB COPY

4. Therefore, the complainant filed a private complaint under Section 200 Criminal Procedure Code before the Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.479 of 2017 against the revision petitioner/accused for the offence punishable under Section 138 read with 142 of Negotiable Instruments Act, 1881. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused/revision petitioner under Section 204 Cr.P.C. On appearance of the accused, the Judicial Magistrate furnished copies of the records to him under Section 207 Criminal Procedure Code. When the revision petitioner/accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty. Therefore, the case was posted for trial.

5. On the side of the complainant, the complainant examined himself as PW.1 and marked six documents as Ex.P1 to Ex.P6. When the accused was questioned under Section 313 (1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. On the side of the accused, one



Crl.R.C.No.959 of 2019

WEB COPY

Aswin Yadav, Assistant Manager, Indian Overseas Bank was examined as DW.1 and Ex.D1 was marked.

6. The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, vide his judgement dated 07.07.2018 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 six months under Section 255(2) Cr.P.C., and to pay a sum of Rs.72,616/- to the complainant towards compensation under Section 357(3) Cr.P.C., in default, to undergo simple imprisonment for a further period of one month.

7. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.240 of 2018 before the Court of II Additional District Sessions, Erode District. The learned Sessions Judge, after analysing the oral and documentary evidence on record, concurred with the findings of the Trial Court and confirmed the conviction and sentence vide his judgement and orders dated 17.07.2019, aggrieved over which,

Page 5 of 10



CrI.R.C.No.959 of 2019

the present criminal revision case is filed.

8. Ms.S.Varshini, learned Legal Aid Counsel for the revision petitioner contended that the revision petitioner issued a cheque only to one P.Baskar and not to the complainant. The complainant has mentioned his name in his private complaint as P.Baskaran. According to her, this was admitted by the Manager of the Indian Overseas Bank who had deposed that one P.Baskaran is having a Savings Bank Account with their bank in A/c.No.162701000002532. Her specific contention is that when there is a discrepancy with regard to the name of the complainant, the complainant had not proved his case by way of adducing acceptable evidence and both the Courts below had not taken this aspect into consideration.

9. Per contra, M/s.D.Jagajothi, learned counsel appearing for the respondent/complainant contended that both the Courts below had properly analysed the oral and documentary evidence and had rightly come to the conclusion that the accused committed the offence under



CrI.R.C.No.959 of 2019

WEB COPY

Section 138 of the Negotiable Instruments Act. According to him, there is no reason for this Court to interfere with the same.

10. At the outset, it may be observed that the accused admitted his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved by the accused.

11. In the reply notice, though it is contended by the accused that the cheque (Ex.P1) was issued only as a security in favour of one Thirupathi Exports, the same has not been proved by way of adducing acceptable evidence. Moreover, in the reply notice (Ex.P6), the difference in the name of the complainant is also not indicated. However, the Manager, Indian Overseas Bank, (DW.1) had clearly deposed that the complainant is having a Savings Bank Account with their bank bearing A/c.No.162701000002532.

12. The cheque was drawn by the revision petitioner favouring



CrI.R.C.No.959 of 2019

WEB COPY

the complainant and it was dishonoured. The name of the payee or the spelling of payee is immaterial, as the accused has not adduced any evidence to show that she issued the cheque in favour of P.Baskar alone and not to the complainant. It has not also been explained as to how the cheque (Ex.P1) came to the hands of the complainant. Both the Courts below had properly analysed the evidence on record and had come to a definite conclusion that accused is guilty of offence punishable under Section 138 of Negotiable Instruments Act. As regards the sentence, both the Courts below had adequately sentenced the revision petitioner. I do not see any reason to interfere with the same.

13. In the result,

(i) The Criminal Revision Petition stands dismissed. No costs.

Consequently, the connected criminal miscellaneous petitions are closed.

(ii) The judgment dated 17.07.2019 passed by the Court of II Additional District and Sessions, Erode District in C.A.No.240 of 2018 and the judgment dated 07.07.2018 passed by the Judicial



CrI.R.C.No.959 of 2019

WEB COPY Magistrate, Fast Track Court No.1, Erode in S.T.C.No.479 of 2017, are confirmed.

(iii) This Court places on record its appreciation to Ms.S.Varshini, learned Legal Aid Counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to Ms.S.Varshini towards her fee.

15.04.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

dm

Copy to:

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai – 600 104.

To

1.The II Additional District and Sessions,
Erode District.

2.The Judicial Magistrate, Fast Track Court No.I, Erode.

Note: As directed by RHJ, Issue order copy on 02.05.2024.



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Crl.R.C.No.959 of 2019

R. HEMALATHA, J.
dm

Crl.R.C.No.959 of 2019

15.04.2024