



Crl.R.C.No.961 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.No.961 of 2019

L.Balasubramaniam

... Petitioner

Vs.

G.Senthilkumar

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the judgment passed by the I Additional District and Sessions Judge, Coimbatore in C.A.No.436/2018 dated 24.07.2019 confirming the judgment dated 11.09.2018 in C.C.No.124/2014 passed by the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore.

For Petitioner : Mr.J.Franklin

For Respondent : No appearance

ORDER

Challenge in this criminal revision case is made to the judgement and orders passed by the learned Additional District and Sessions Judge, Coimbatore in C.A.No.436/2018.



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2.The case of the respondent/complainant is that the revision petitioner/accused borrowed a sum of Rs.5,00,000/- on 01.12.2012 and in order to liquidate the said amount he issued a cheque bearing No.488415 dated 02.03.2013 (Ex.P1) drawn on State Bank of India, Kothagiri Branch in favour of the complainant. When the complainant presented the cheque for collection on 02.03.2013 through his banker, viz., Kotak Mahindra Bank Limited, Avinasi Road Branch, the cheque was returned for the reason 'Funds Insufficient' as is seen from the cheque Return Memo dated 04.03.2013 (Ex.P2). Therefore, the complainant issued a statutory notice dated 08.03.2013 (Ex.P3) to the accused demanding the latter to pay the amount due under the cheque and the notice was served on the accused on 12.03.2013, as is evidenced by the postal acknowledgement card (Ex.P4). The revision petitioner / accused issued a reply notice dated 22.03.2013 (Ex.P5), which according to the complainant contained false allegations.

3.The complainant, therefore, filed a private complaint before



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the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore. under Section 200 Cr.P.C. against the respondent/accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.124/2014. The learned Judicial Magistrate, Fast Track Court No.II, Coimbatore, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the respondent/accused and on his appearance, furnished copies of records under Section 207 Cr.P.C. When the respondent/accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty and the case was therefore posted for trial.

4.The complainant examined himself as PW.1 and marked Ex.P1 to Ex.P5. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, the accused denied of having committed any offence. However, the accused did not adduce any oral / documentary evidence on his side.



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5.After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as detailed hereunder.

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for six months and to pay a compensation of Rs.5,00,000/- with interest @ 6% p.a within a period of one month, in default, to undergo simple imprisonment for six months.

6. Aggrieved over the same, the accused filed an appeal in C.A.No.436/2018 before the I Additional District and Sessions Court, Coimbatore. The learned I Additional District and Sessions Judge, Coimbatore, after analysing the oral / documentary evidence adduced on both sides confirmed the conviction and sentence passed by the Trial Court Judge, as against which the present criminal revision is filed.



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7. Mr.J.Franklin, learned counsel for the revision petitioner would contend that the accused borrowed only a sum of Rs.1,00,000/- on 31.03.2012 and handed over five post dated cheques and one of such cheques was misused by the respondent / complainant. According to her, a reply notice dated 22.03.2013 was sent by the present revision petitioner to the respondent/complainant in this regard.

8. A perusal of the records shows that the accused did not deny his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act unless the contrary is proved by the accused. In the instant case, the accused did not adduce any acceptable evidence to rebut the presumption. Though in the reply notice it is stated that the cheque was issued as a security for the loan amount of Rs.1,00,000/- obtained by the accused from the respondent/complainant on 31.03.2012, and it was also repaid subsequently the same was not proved by way of adducing acceptable evidence. Except by issuing a reply notice, the present revision petitioner did not take any steps to get back the alleged signed blank



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cheques given by him to the respondent/complainant though it is specifically contended by him that he repaid the said loan. He has not also lodged any complaint against the respondent/complainant with the police for the reasons best known to him. If really the revision petitioner had handed over five signed blank cheques as security for the loan amount obtained by him on 31.03.2012 and subsequently repaid the entire amount, he would not have kept quiet. He did not also issue any notice to the respondent/complainant to return the signed blank cheques after the alleged repayment of the loan amount of Rs.1,00,000/-.

9. It is also pertinent to point out that this Court while granting suspension of sentence and exemption from surrendering before the trial Court, directed the revision petitioner to deposit 50% of the cheque amount within a period of four weeks. Till date the said amount has not been deposited by the present revision petitioner. In fact on 14.11.2019 this Court directed the trial Court to commit the petitioner to custody for undergoing remaining period of sentence.



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10. Be that as it may, both the courts below had concurrently held that there is an existing legally enforceable debt and that the accused did not rebut the presumption under Sections 118 and 139 of the Negotiable Instruments Act. In fact, both the Courts below had analysed the entire evidence on record in the right perspective and I therefore do not see any reason to interfere with the same.

11. In the result, this Criminal Revision Case is dismissed. No costs.

- i. The judgment dated 24.07.2019 passed in C.A.No.436/2018 by the I Additional District and Sessions Judge, Coimbatore and the judgment dated 11.09.2018 passed in C.C.No.124/2014 by the Judicial Magistrate, Fast Track Court No.II, Coimbatore, are confirmed.



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- ii. The revision petitioner/accused shall surrender before the Judicial Magistrate, Fast Track Court No.II, Coimbatore, within 15 days from the date of receipt of a copy of this order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The I Additional District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court No.II, Coimbatore.

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