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CrI.R.C.No.1072 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

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

CrI.R.C.No.1072 of 2019

Palanisamy

... Petitioner / Accused

Vs.

V.Radhakrishnan

... 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 12.09.2019 in C.A.No.4/2019 passed by the IV Additional District and Sessions Judge, Erode District at Bhavani, confirming the Judgment and orders, dated 04.03.2019 in S.T.C.No.540/2017 passed by the Judicial Magistrate I, Bhavani.

For Petitioner : Mr.A.K.Kumarasamy,
Senior Counsel assisted by
Mr.S.Kaithamalai Kumaran

For Respondent : Mr.V.Balamurugan

ORDER

Challenging the conviction and sentence passed by both the Courts below, the present Criminal Revision is filed by the petitioner/ 1st Accused.



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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 revision petitioner / 1st accused was working as a Manager in Lakshmi Vilas Bank and borrowed a sum of Rs.10,00,000/- from the complainant on 23.05.2014 and issued Cheque bearing No.000022, dated 23.06.2014 (ExP1) for a sum of Rs.10,00,000/- drawn on Lakshmi Vilas Bank, Erode Branch, in favour of the complainant.
- ii. When the cheque was presented for collection by the complainant through his bankers viz., Canara Bank, Sakthi Nagar branch, on 23.06.2014, it was returned for the reason 'funds insufficient' as is evidenced by the cheque return memo, dated 25.06.2014 (Ex.P2).
- iii. Thereafter, the complainant issued a statutory notice, dated 21.07.2014 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the



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date of receipt of the notice.

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- iv. The accused received the notice as is evidenced by the postal acknowledgment Cards (Ex.P4 and Ex.P5), but did not come forward to make good the payment and did not also send any reply notice.
- v. Therefore, the complainant filed a private complaint before the Judicial Magistrate I, Bhavani under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in S.T.C.No.540/2017.
- vi. According to the complainant, the 2nd accused knows the entire transaction between the first accused and the complainant and therefore, he was added as a party to the proceedings.
- vii. The learned Metropolitan 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 records were furnished to them under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since



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the accused pleaded not guilty, the case was posted for trial.

- ix. The complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P6.
- x. The accused, when questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. He examined one Narayanasamy and marked Ex.R1 to Ex.R5.
- xi. After full contest, the learned Judicial Magistrate, vide his Judgment dated 04.03.2019, convicted the 1st accused for the offence punishable under Sections 138 of the Negotiable Instruments Act and sentenced him to undergo Simple imprisonment for a period of one year and to pay a compensation of Rs.10,00,000/-, in default, to undergo simple imprisonment for a period of three months. The trial Court acquitted the 2nd accused under Section 255(1) Cr.P.C.,
- xii. Aggrieved over the same, the 1st accused filed an appeal in C.A.No.4/2019 before the IV Additional District and Sessions Judge, Erode District at Bhavani.



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xiii. The learned IV Additional District and Sessions Judge, 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 1st accused.

4. Heard Mr.A.K.Kumarasamy, learned Senior Counsel assisted by Mr.S.Kaithamalai Kumaran, appearing for the revision petitioner and Mr.V.Balamurugan, learned counsel for the Respondent.

5. At the outset, it may be observed that the 1st accused did not deny his signature on the cheque (Ex.P1). 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 accused even though was in receipt of the statutory notice, did not send any reply to the complainant denying his liability. In the trial Court, a defence was taken by the accused that the complainant had requested him to help him to do online Trading Business



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and for that purpose he paid a sum of Rs.10,00,000/- to him. However, since there was a loss to the tune of Rs.3,80,000/-, the accused repaid the balance amount of Rs.6,20,000/- to the complainant in the presence of one Balu (not examined) and Narayanasamy (D.W.1). The evidence of D.W.1 is very vague and is not also supported by any documentary evidence. The 1st accused had not adduced any acceptable evidence to show that he obtained a sum of Rs.10,00,000/- from the complainant only to help him to trade online and that he repaid a sum of Rs.6,20,000/-. If the contention of the accused is true, he would not have kept quiet even after receiving the statutory notice from the complainant as he did not take steps to initiate Criminal proceedings against the complainant. Both the Courts below had analysed these aspects of the case and had concluded that the accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act. This Court while exercising revisional jurisdictional 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. All the observations made by both the Courts below are perfectly in order and I do not see any reason



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to interfere with the same. Therefore, the 1st accused is found guilty of the offences punishable under Section 138 of the Negotiable Instruments Act.

7. As regards the sentence, Mr.A.K.Kumarasamy, learned Senior Counsel assisted by Mr.S.Kaithamalai Kumaran, appearing for the revision petitioner/1st accused contended that the revision petitioner is now hospitalised and therefore he cannot undergo imprisonment and mobilise funds. Accordingly to him, the age of the revision petitioner is more than 70 years.

8. It is also contended by the learned Senior counsel that the 1st accused had already deposited a sum of Rs.3 lakhs to the credit of Judicial Magistrate I, Bhavani. The complainant can withdraw a sum of Rs.3,00,000/- from the trial Court by filing an appropriate application.

9. Considering the facts and circumstances of the case, the sentence passed by the trial Court is modified as under:



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“The revision petitioner / accused is sentenced to undergo Simple Imprisonment for a period of three months and to pay compensation of Rs.7,00,000/- (Rupees Seven Lakhs only), in default to undergo Simple Imprisonment for a period of four weeks.”

10. In the result,

- i. the Criminal Revision Case is Partly allowed;
- ii. the conviction of the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act stands passed in S.T.C.No.540/2017 and C.A.No.4/2019 is confirmed.
- iii. The revision petitioner / accused is sentenced to undergo Simple Imprisonment for a period of three months and to pay a compensation of Rs.7,00,000/- (Rupees Seven Lakhs only) to the complainant, in default to undergo Simple Imprisonment for a period of four weeks.
- iv. Since the accused had already deposited a sum of Rs.3 lakhs (out of compensation of Rs.10,00,000/-) to the credit of Judicial



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Magistrate I, Bhavani, the complainant can withdraw the same by way of filing an appropriate application before the trial Court.

- v. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate I, Bhavani, 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 sentence.

25.07.2024

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

To

- 1.The IV Additional District and Sessions Judge, Erode District at Bhavani.
- 2.The Judicial Magistrate I, Bhavani.

R. HEMALATHA, J.



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