IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

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

Crl.R.C.No.853 of 2017

C.Srinivasan ... Petitioner

Vs.

M.Nagarajan (Deceased)

2.The Inspector of Police,
Podanur Police Station.

3.Lalitha

4.Devi

5.Balarani ... Respondents

(R2 *suo moto* impleaded as per order dated 03.03.2022 in Crl.R.C.No.853/2017)

(RR3 to 5 *suo moto* impleaded as per order dated 10.01.2023 in Crl.R.C.No.853/2017

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 17.09.2016 passed in C.A.No.19/2016 by the V Additional District and Sessions Judge, Coimbatore, confirming the judgement and orders dated 25.01.2016 passed in C.C.No.282/2013 by the Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore.

For Petitioner : Mr.Naveen Infant

R2 shall be deleted as they are not proper and necessary party

For R3 to R5 : No appearance

ORDER

Challenging the conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.19/2016 confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore in C.C.No.282/2013, the present criminal revision case is filed.

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 accused borrowed a sum of Rs.3,00,000/- from the complainant on 04.01.2012 promising him to repay the same together with interest @ 24% per annum and also executed a promissory note (Ex.P1) on the same date. The accused paid interest only for six months and thereafter, did not pay any amount either towards interest or principal.

ii. After much persuasion by the complainant, the accused issued a cheque bearing No.390557 dated 07.02.2013 (Ex.P2) drawn on Syndicate Bank, Kuniamuthur Branch, Coimbatore for a sum of Rs.3,00,000/-.

iii. When the complainant presented the cheque for collection on 08.02.2013 through his banker viz., Canara Bank, Sundarapuram Branch, Coimbatore, the same was returned for the reason "Funds Insufficient", as is seen from the cheque return memo (Ex.P3).

iv. Thereafter, the complainant issued a statutory notice dated

19.02.2013 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.

v. Though the accused received the said statutory notice on 22.02.2013, as is evidenced by the postal acknowledgement card (Ex.P5), 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 before the Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.282/2013.

vii. The learned Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. 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 forth 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 and marked Ex.P1 to Ex.P5.

x. Thereafter, 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.

xi. The accused examined himself and one another witness and marked Ex.D1 to Ex.D7.

xii. After full trial, the learned trial court judge, vide his judgment dated 25.01.2016 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.5,000/- in default, to undergo simple imprisonment for two months.

xiii. Aggrieved over the same, the accused filed an appeal in C.A.No.19/2016 before the V Additional District and Sessions Court, Coimbatore. The learned V Additional District Sessions Judge after analysing the evidence on record, confirmed the findings recorded by the Trial Court Judge and dismissed the appeal as against which the present criminal revision case is filed by the accused.

4. Heard Mr.Naveen Infant, learned counsel for the revision petitioner and Ms.Shahana Fathima, learned Government Advocate (Crl. Side) for the respondents.

5. At the outset it may be observed that the accused has not denied his signature either on the cheque (Ex.P2) or on the promissory note (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of N.I. Act unless the contrary is proved.

6. Mr.Naveen Infant, learned counsel for the revision petitioner would contend that the accused had handed over the cheque to the wife of the complainant only as a security for the mortgage loan obtained by one Ramesh (DW1) from the wife of the complainant. According to him, the said Ramesh repaid the entire mortgage loan amount. Though it was requested to the wife of the complainant to return the signed blank cheque issued by the accused and the promissory note, she did not return the same. It is further contended by him that the present complainant is doing money lending business without a valid licence and therefore, he cannot maintain a private complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of N.I. Act. In this regard, he relied on the decision of this Court in ***Kathirvelu vs. Anbazhagan*** reported in

(2008)5 MLJ 39 and the decision of Hon'ble Punjab and Haryana High Court in ***Narsi Dass vs. Surender*** reported in ***2015(1)RCR(Criminal)104***. His contention is that when a money lender files a suit for recovery of loan or files a private complaint under Section 138 of N.I. Act without a valid licence the suit as well as the complaint under Section 138 of N.I. Act should be dismissed. He also drew the attention of this Court to the cross examination of the complainant (PW1) wherein he had admitted that Ramesh obtained a mortgage loan from his wife and that the present accused deposited his title deeds for due repayment of the loan amount by DW1 and the amount was also liquidated. He further contended that when PW1 himself had admitted that the loan obtained by Ramesh was liquidated and a receipt dated 18.03.2009 (Ex.R2) was also issued by his wife, she should have returned the cheque issued by the accused. In the circumstances, the conviction and sentence passed by both the Courts below cannot be sustained.

7. As regards the contention that since the complainant is running Money Lending Business without a valid licence it is relevant to extract Section 9(5) of the Money Lending Act :

> "***9. Money-lender to keep books, give receipts, etc.***
> *5. In any suit or proceeding relating to a loan, if the Court finds that a money-lender has not maintained an account as required by clause (a) of subsection (1), he shall not be allowed his costs."*

8. The decision in ***Narsi Dass vs. Surender*** in C.R.A.No.A-1101-MA of 2014 relates to the Provisions of Punjab and Haryana Money Lending Act. Therefore, the same cannot be applied to the facts of the present case. The decision in ***Kathirvelu vs. Anbazhagan*** (cited supra) pertains to a civil dispute. In the instant case, though it is contended that the complainant is running a money lending business without a valid licence, the same has not been proved by way of any acceptable evidence. Moreover as per section 9(5) of Tamil Nadu Money Lenders Act the money lender is not entitled to costs in a suit or any other proceedings initiated by him, if the same is instituted without a valid

licence to conduct business in money lending.

9. The accused, as already observed, admitted his signature on the cheque and the promissory note and he had not adduced any acceptable evidence to show that he handed over the cheque to the complainant's wife only as a security for the loan obtained by his friend Ramesh (D.W.1).

10. In the instant case, the complainant P.W.1 had admitted that his wife lent a loan to D.W.1 by way of mortgage and D.W.1 had also repaid the said amount. In the circumstances, it is not known as to why the accused did not issue any notice to the wife of the complainant to return the signed blank cheque and promissory note to him immediately. He did not also initiate any criminal action against the complainant's wife till date for the reasons best known to him.

11. 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 dismissed as devoid of merits.

12. In the result,

i. The Criminal Revision Case is dismissed.

ii. The judgment dated 17.09.2016 passed in C.A.No.19/2016 by the V Additional District and Sessions Judge, Coimbatore and the judgement dated 25.01.2016 passed in C.C.No.282/2013 by the Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore, are confirmed.

iii. The revision petitioner/accused shall surrender before the learned Judicial Magistrate, Fast Track Court at Magisterial Level -II, Coimbatore, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

03.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

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

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

3.The Inspector of Police, Podanur Police Station.

R. HEMALATHA, J.

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