



WEB COPY



Crl.R.C.No.1512 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1512 of 2022

V.Sakthivel

... Petitioner

Vs.

Anandha Kumar

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the impugned judgment Crl.A.No.10/2022 dated 26.09.2022 on the file of II-Addl, District and Sessions Court, Chidambaram confirming the conviction and sentence imposed in S.T.C.No.122/2018 dated 30.03.2022 on the file of Judicial Magistrate-I, Chidambaram convicting the petitioner/appellant/accused U/S 138 of N.I Act and sentencing him to undergo 6 months R.I and compensation 8 lakhs U/s 357(3) Cr.P.C., and set aside the same as illegal to secure ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.K.Kathiresan

ORDER

The petitioner was convicted by the learned Judicial Magistrate No.I, Chidambaram (trial Court) *vide* judgment, dated 30.03.2022 in S.T.C.No.122 of 2018 and sentenced to undergo six months simple imprisonment and to pay compensation of Rs.8,00,000/- to the respondent/complainant in default to



undergo one month simple imprisonment. Challenging the same, an appeal was filed by the petitioner before the II Additional District Sessions Judge, Chidambaram (lower appellate Court) in Crl.A.No.10 of 2022 and the same was dismissed *vide* judgment, dated 26.09.2022 confirming the judgment of the trial Court. Aggrieved over the same, the present criminal revision case has been filed.

2.The learned counsel for the petitioner submitted that the petitioner and the respondent are relatives, due to relationship as a security purpose, a cheque was given to the respondent for earlier transaction for borrowing a sum of Rs.1,50,000/-. The petitioner repaid around Rs.4,50,000/- on various dates. Though the respondent promised to return the cheque, for some reason it was not returned. Later, the cheque filled up for amount of Rs.8,00,000/-. The respondent has got no source of income for giving loan for Rs.8,00,000/- and the petitioner referring to the Bank Statement, proved the respondent has no source to pay and his maximum transaction is only Rs.1,00,000/-. Further, the respondent's claim is that he had been to Singapore for employment, earned money, but not produced any document to show that he was in Singapore, employed. He further submitted that the respondent using a stale cheque filed



a false complaint and there is no existing liability. Despite the petitioner probablized his defence, the trial Court as well as the lower appellate Court failed to considered the defence of the petitioner. On the other hand, the Courts below had merely gone by invoking presumption under Sections 118 and 139 of the Negotiable Instruments Act without considering the attendant circumstances and evidence. Hence, he prays for acquittal.

3.The learned counsel for the respondent submitted that the petitioner took loan of Rs.8,00,000/- and in discharge of the liability, issued the cheque on 22.03.2018. The petitioner requested the respondent not to present the cheque immediately and sought time. On informing the petitioner, on 11.04.2018, the cheque was deposited, on the same day, which was returned from the petitioner's bank with an endorsement 'Account Dormant'. The petitioner knowing very well about insufficient balance, issued the cheque to the respondent. Thereafter, the statutory notice issued on 18.04.2018, the petitioner received the same on 21.04.2018, but neither paid the cheque amount nor sent any reply. On the contrary, for the first time during trial he makes a claim that the respondent has no financial capability to lend such a huge amount. He further submitted that the petitioner not denied the issuance



of the cheque or the signature found in it, his only defence is that the cheque was given for the earlier transaction, but the petitioner unable to produce even iota of evidence to show that he made payment of Rs.4,50,000/- to the respondent. The petitioner is working in Rajah Muthaiah Medical College, Annamalai Nagar, Chithambaram as Security Guard having regular income and he is a man with resources.

4.He further submitted that the defence raised by the petitioner considered by the trial Court. During trial, the petitioner examined himself as PW1, Bank Manager of KVB Bank, Annamalai Nagar Branch was examined as PW2 and Bank Manager of KVB Bank, Chidambaram Branch was examined as PW3 and he marked four documents as Exs.P1 to P4. On the side of the defence no witness examined, but Ex.D1 alone marked. On the evidence and materials, the trial Court found that the petitioner could not give explanation or probablize his defence, had convicted the petitioner as stated above. Even before the lower appellate Court, the petitioner took the same defence which was independently considered and finding the petitioner's explanation untenable without any material, dismissed the appeal.



5.It is further submitted that the petitioner even before this Court on 20.02.2024 made a representation that he would show his bonafide of settling the issue by making substantial payment, but he took time by giving one reason or other and thereafter not paid a single pie to the respondent. In this case, the petitioner deposited Rs.1,60,000/- i.e., 20% of the cheque amount to the credit of S.T.C.No.122 of 2022 on the file of the trial Court. Hence, the respondent may be permitted to withdraw the said amount and prays for dismissal of the revision.

6.Considering the submissions and on perusal of the materials, it is seen that the issuance of the cheque, its signature are not denied. The relationship between the petitioner and the respondent is also not denied. The only explanation given by the petitioner is that for earlier transaction of Rs.1,50,000/-, the cheque which has been given as security, was misused by the respondent. Even for Rs.1,50,000/-, the petitioner repaid totally Rs.4,50,000/-. Though it was a serious contention, no material produced to substantiate the same. The trial Court as well as the lower appellate Court considered the petitioner's contention on the evidence and materials and finding the explanation given by the petitioner untenable. Now the petitioner



Crl.R.C.No.1512 of 2022

has once again made the same contention before this Court.

WEB COPY

7.In view of the above, this Court finds that the contention of the petitioner is unacceptable and there is no merits for consideration. Hence, the judgment of the trial Court, dated 30.03.2022 in S.T.C.No.122 of 2018 and the judgment of the lower appellate Court in Crl.A.No.10 of 2022, dated 26.09.2022 are hereby confirmed. Accordingly, this Criminal Revision Case stands dismissed.

8.The trial Court is directed to take steps to execute the conviction warrant and secure the petitioner for sufferance of the remaining period of sentence. The respondent is entitled for Rs.1,60,000/- i.e., 20% of the cheque amount deposited by the petitioner in S.T.C.No.122 of 2022. The trial Court is directed to permit the petitioner to withdraw the 20% of the cheque amount. Notice to the petitioner is dispensed with.

20.03.2024

Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

vv2



WEB COPY



CrI.R.C.No.1512 of 2022

To

- 1.The II Additional District Sessions Judge,
Chidambaram.
- 2.The Judicial Magistrate No.I,
Chidambaram.



WEB COPY



Crl.R.C.No.1512 of 2022

M.NIRMAL KUMAR, J.

vv2

Crl.R.C.No.1512 of 2022

20.03.2024