



Crl.R.C.No.4 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.4 of 2024 and
Crl.M.P.No.8 of 2024

K.R.Surendranath

... Petitioner

Vs.

B.Mukundan

... Respondent

Prayer: Criminal Revision Petition filed under Sections 374(2) of Criminal Procedure Code, to call for the records/judgment in Crl.Appeal No.166 of 2018 dated 21-12-2021 by the learned V Additional District and Sessions Judge, Coimbatore confirming the conviction and sentence passed in C.C.No.450 of 2015, dated 15-03-2018 by the Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore and set aside the same.

For Petitioner : Ms.Bhavani for
Mr.T.Shunmugarajeshwaran

For Respondent : Mr.S.Mohanraj,
Legal Aid Counsel

ORDER

The petitioner was convicted by the learned Judicial Magistrate, Fast Track Court No.1 @ Magisterial Level, Coimbatore (trial Court) by judgment, dated 15.03.2018 in C.C.No.450 of 2015 and sentenced to undergo Simple Imprisonment for six months and to pay compensation of



Rs.5,50,000/- to the respondent within two months, in default to undergo Simple Imprisonment for two months for offence under Section 138 of the Negotiable Instruments Act, 1881. Aggrieved over the same, an appeal was filed by the petitioner before the learned V Additional District and Sessions Judge, Coimbatore (lower appellate Court) in Crl.A.No.166 of 2018. The lower appellate Court, by judgment, dated 21.12.2021 dismissed the appeal confirming the judgment rendered by the trial Court. Challenging the same, the present Criminal Revision Case is filed.

2.Gist of the case is that the petitioner/accused is a known person to the respondent/complainant and he approached the respondent and borrowed a sum of Rs.5,50,000/- for family and other expenses on 20.11.2014. The petitioner executed promissory note, dated 20.11.2014 (Ex.P1) in favour of the respondent and agreed to pay same with interest @ 12% p.a. The petitioner neither paid any interest nor paid the principal to the respondent. To discharge his liability, the petitioner issued a cheque (Ex.P2), dated 19.03.2015 bearing No.008043 for Rs.5,50,000/- drawn on Axis Bank, Gandhipuram Branch, Coimbatore in favour of the respondent.



When the cheque (Ex.P2) was presented for encashment with the respondent's bankers viz., Andhra Bank, Ramnagar Branch, Coimbatore on 25.03.2015, the same was dishonoured for the reason that 'funds insufficient' with a return memo, dated 31.03.2015 (Ex.P3). Thereafter, the statutory notice was issued on 10.04.2015 (Ex.P4) calling upon the petitioner to settle the cheque amount. The statutory notice was received by the petitioner on 11.04.2015 and the petitioner sent a reply (Ex.P6) on 07.05.2015. Since the reply was not tangible, the respondent proceeded with the complaint for offence under Section 138 of the Negotiable Instruments Act, 1881 (For short 'Act') before the trial Court.

3.During trial, the respondent examined himself as PW1 and marked six documents as Exs.P1 to P6. On the side of the defence/petitioner, no witness examined and no document marked. After ful-fledged trial, the trial Court convicted the petitioner and the same was confirmed by the lower appellate Court as stated above.

4.In this case, despite notice served to the respondent, he failed to



appear. Thereafter, through the jurisdiction Police viz., the Inspector of Police, C4 Rathnapuri Police Station, Coimbatore, notice served to the respondent on 09.12.2023, thereafter too, he failed to appear before this Court. Hence, this Court appoints Mr.S.Mohanraj as Legal Aid Counsel for the respondent *vide* order, dated 30.01.2024.

5.The learned counsel for the petitioner submitted that the petitioner is not liable to pay any legally enforceable debt to the respondent. The respondent admits that he filed a case against Sunitha, the sister of the petitioner and one Juliana, the friend of Sunitha for a total amount of Rs.10,50,000/-. But the respondent has not source of income to lend such huge amount. The respondent further admits that he has not paid any income tax for the alleged amount lent. The specific case of the petitioner is that the petitioner's sister Sunitha borrowed a sum of Rs.30,000/- on 15.01.2015, at that time, she issued five cheques and two cheques of the petitioner and also blank cheque and blank promissory note signed by the petitioner for security purpose. Thereafter, the petitioner's sister Sunitha repaid the borrowed amount on 10.02.2015 and demanded the said



documents. The respondent stated that he kept the said documents at Kerala and the petitioner's sister believed such words of the respondent. Thereafter, the respondent misbehaved with Sunitha who lodged Police complaint. As a counterblast, the respondent filled up the blank cheque (Ex.P2) and promissory note (Ex.P1) lodged the false complaint before the trial Court.

6.She further submitted that the petitioner rebutted the petitioner's demand by sending a detailed reply notice (Ex.P6), for which, the respondent not sent any rejoinder accepting the explanation given by the petitioner, which the trial Court failed to consider. The trial Court on its own had given explanation that the respondent was working as Plumber on contract basis and thereby, earning a sum of Rs.30,000/- to Rs.50,000/-, due to which, he is unable to produce any documents to prove the source of income. The respondent's explanation that the he pledged some jewels and availed jewel loan and paid the petitioner is not acceptable more so such huge amount of Rs.5,50,000/-. Further, the trial Court gave a finding that the petitioner admits issuance of blank cheque and given authority to the



respondent to fill up the same under Section 20 of the Act is not proper for the reason that the petitioner gave explanation under what circumstances, the blank cheques were received and for what reason it has been filled up without the authority of the petitioner.

7.Thus, the trial Court not properly considered the evidence and documents and the lower appellate Court also not independently assessed the appeal. Hence, she prays for setting aside both the judgments of the Courts below.

8.The learned counsel for the respondent submitted that the petitioner not denied issuance of cheque (Ex.P2) and its signature, hence, Section 20 of the Act would come into play. The explanation given by the petitioner in the reply notice (Ex.P6) is not with correct particulars and not tenable, hence, ignoring the same, the complaint filed before the trial Court. In this case, Ex.P1 is the promissory notice and Ex.P2 is the cheque for Rs.5,50,000/-. The trial Court disbelieving the defence of the petitioner on



the ground that no prudent person would handover seven cheques for Rs.30,000/- which was borrowed by the petitioner's sister Sunitha. He further submitted that the petitioner neither examined his sister's Sunitha nor her friend Juliana to probablize his defence that the loan taken by Sunitha had been repaid and a false case foisted against the said Sunitha and Juliana. Mere by suggestion without substantiating the same with evidence is not acceptable, cannot be construed as if petitioner probablized his defence. In this case, the promissory note (Ex.P1) not signed attested by witness, but one Sathish Kumar made an endorsement that he filled up the promissory note which would not affect the case of the respondent. The trial Court as well as the lower appellate Court rightly considered the evidence and materials produced by the respondent and convicted the petitioner. He further submitted that the petitioner after dismissal of the appeal again absconded, thereafter, he was remanded to the custody on 07.09.2023. Hence, he prays for dismissal of the revision.

9.Considering the submissions and on perusal of the materials, it is seen that the trial Court convicted the petitioner on 15.03.2018, thereafter,



he preferred an appeal which got dismissed on 21.12.2021 and he was remanded in this case on 07.09.2023. The contention of the petitioner that the petitioner's sister Sunitha handed over blank signed cheque of the petitioner for the loan taken by her cannot be accepted, but on the other hand it is admitted by the respondent that he is not an income tax assessee and he extended a loan for Rs.10,50,000/- to the petitioner's sister Sunitha and one Juliana and to the petitioner for a sum of Rs.5,50,000/-. Admittedly, the respondent has not shown any of the transactions and source in the income tax returns. The trial Court giving its own reason that non-declaration of the income tax returns would not affect the respondent's case, is to be viewed with caution in view of the respondent's admission that the promissory note (Ex.P1) is without any witness to the document.

10.Be that as it may, it is seen that in this case, the respondent was working as Plumber on contract basis and earning meager income. Such being the position, the respondent extending such huge amount of Rs.5,50,000/- to the petitioner causes some doubt. The petitioner admittedly not denied his signature and issuance of the cheque (Ex.P2). In this case,



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the petitioner already arrested and remanded on 07.09.2023. He is in prison for more than five months in the Central Prison, Coimbatore.

11.In view of the above, this Courts confirms the conviction of the petitioner for offence under Section 138 of the Act and modifies the sentence of six months imprisonment to the period of three months. The default sentence of two months for non-payment of compensation is confirmed. Hence, the petitioner to undergo total period of five months imprisonment. Since the petitioner is in jail from 07.09.2023, the said total period of five months imprisonment is already undergone. Accordingly, the petitioner is directed to be released forthwith if he is not required in any other case.

12.In the result, this Criminal Revision Case stands disposed of. Consequently, the connected Criminal Miscellaneous Petition is closed.

16.02.2024

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Note: Issue Order Copy on 22.02.2024.



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M.NIRMAL KUMAR., J.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

To

- 1.The V Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court No.1 @ Magisterial Level,
Coimbatore.
- 3.The Central Prison,
Coimbatore.

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