



Crl.R.C.No.1242 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM

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

Crl.R.C.No.1242 of 2019

R.Suman

... Petitioner

vs.

1.P.Ravi

Son of Palanisamy
No.28, Rangasamy Pillai Street
Thiruchengode Town and Taluk
Namakkal District

Power Agent
K.Prakash M/A 42
Son of K.S.Karuppannan
No.36/37, Karuveppampatty Post
Thiruchengode Taluk
Namakkal District

2.The Public Prosecutor

Namakkal District

... Respondents

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the judgement and orders dated 05.07.2019 passed in C.A.No.56 of 2017 by the Principal Sessions Judge, Namakkal confirming the judgment and orders dated 09.08.2017



Crl.R.C.No.1242 of 2019

passed in S.T.C.No.218 of 2016 by the Judicial Magistrate (FTC),
Thiruchengode.

For Petitioner : Mr.D.Balachandran

For R1 : Mr.S.Arthanareeswaran

For R2 : Mr.S.Rajakumar
Additional Public Prosecutor
Assisted by Ms.A.Shahana Fathima,
Government Advocate (Crl.Side)

ORDER

Challenging the conviction and sentence passed by the Principal Sessions Judge, Namakkal in C.A.No.56 of 2017, dated 05.07.2019, confirming the conviction and sentence passed by the Judicial Magistrate (FTC), Thiruchengode in S.T.C.No.218 of 2016, dated 09.08.2017, the present Criminal Revision case is filed by the accused.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present criminal revision would also be indicated.

3. The case of the 1st respondent/complainant in a nutshell is as



Crl.R.C.No.1242 of 2019

follows:-

The revision petitioner/accused borrowed a sum of Rs.17,00,000/- to meet his urgent family expenses from the 1st respondent/complainant on 10.01.2016 and in order to discharge the said amount, the accused issued the following two cheques (Ex.P1 and Ex.P4) drawn on Axis Bank, Tiruchengode Branch:-

Sl.No.	Date	Cheque No.	Amount in Rs.
1	13.04.2016	012322	Rs.8,00,000/-
2	18.04.2016	012321	Rs.9,00,000/-

He also promised to repay the said amount together with interest within three months. When the cheques were presented by the complainant for collection on 13.04.2016 and 18.04.2016 through his bankers viz., Indian Overseas Bank, Tiruchengode Branch, both the cheques were returned on 14.04.2016 and 19.04.2016 for the reason "Funds Insufficient", as is seen from the cheque return memo (Ex.P3 and Ex.P6). Thereafter, the 1st respondent/complainant issued a legal notice dated 13.05.2016 (Ex.P7) to the revision petitioner/accused demanding the latter to pay the amount



Crl.R.C.No.1242 of 2019

due under the cheques (Ex.P1 and Ex.P4) within a period of 15 days from the date of receipt of the notice. According to the complainant, though the revision petitioner/accused received the said notice on 14.05.2016, as is evidenced by the postal acknowledgement card (Ex.P8), he did not come forward to make good the payment and did not also send any reply.

4. Therefore, the complainant filed a private complaint under Section 200 of Criminal Procedure Code before the Judicial Magistrate (FTC), Thiruchengode in S.T.C.No.218 of 2016 against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the revision petitioner/accused under Section 204 Cr.P.C. On appearance of the accused, the Judicial Magistrate furnished copies of the records to him under Section 207 Cr.P.C. When the revision petitioner/accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty. Therefore, the case was posted for trial.



Crl.R.C.No.1242 of 2019

WEB COPY

5. On the side of the complainant, one K.Prakash was examined as PW.1 and Ex.P1 to Ex.P12 were marked. When the accused was questioned under Section 313 (1)(b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. On the side of the accused, Ex.D1 was marked.

6. The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, convicted the accused for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of 16 months and to pay a fine of Rs.5,000/- to the complainant in default, to undergo simple imprisonment for a further period of one month, vide his judgement dated 09.08.2017.

7. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.56 of 2017 before the Principal Sessions Judge,



Crl.R.C.No.1242 of 2019

WEB COPY

Namakkal. The learned Principal Sessions Judge, after analysing the oral and documentary evidence on record, concurred with the findings of the Trial Court and confirmed the conviction and sentence vide his judgement dated 05.07.2019, aggrieved over which, the present criminal revision case is filed.

8. Mr.D.Balachandran, learned counsel appearing for the revision petitioner contended that the revision petitioner issued the cheques only in favour of one Shanmugam and not to the present complainant. It is also his contention that there was a civil litigation between the revision petitioner's father and the complainant and these aspects have not at all been considered by both the Courts below. Therefore, he prayed for setting aside the conviction and sentence passed by both the Courts below.

9. At the outset, it may be observed that the accused admitted



Crl.R.C.No.1242 of 2019

WEB COPY

his signatures on the cheques (Ex.P1 and Ex.P4). Once the signatures are admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, unless the contrary is proved by the accused.

10. In the instant case, though the revision petitioner/accused received the statutory notice issued by the 1st respondent/complainant, he did not send any reply notice. The contention of the learned counsel for the revision petitioner that the cheques were issued only in favour of one Shanmugam and not in favour of the complainant was not substantiated by way of adducing acceptable evidence.

11. Though an attempt was made by the revision petitioner before the Appellate Court that there was a civil dispute between his father and the complainant with regard to the sale of property of the revision petitioner's father, the same has not been substantiated. Infact, the Sale Agreement dated 30.12.2009 (Ex.R2) was executed by the 1st respondent/complainant in favour of one Thangavel. According to the learned counsel for the revision petitioner this property actually belonged



Crl.R.C.No.1242 of 2019

WEB COPY

to the father of the revision petitioner and a Power of Attorney was executed by the father of the revision petitioner in favour of the 1st respondent/complainant only as a collateral security for the amount borrowed by him from the 1st respondent/complainant.

12. Though the revision petitioner marked a certified copy of the Sale Agreement dated 30.12.2009 (Ex.R2), did not mark the General Power of Attorney allegedly executed by his father.

13. As already observed, the revision petitioner had not established that his father's property was given as a security for the loan obtained by him from the 1st respondent/complainant. This is a case where concurrent findings are recorded by both the Courts below and this Court cannot act as a Second Appellate Court while exercising revisional jurisdiction, unless it is convincingly shown that the judgments passed by both the Courts below are perverse. Infact, both the Courts below, by well reasoned orders, had convicted and sentenced the accused and therefore, I do not see any reason to interfere with the same.



Crl.R.C.No.1242 of 2019

WEB COPY

14. In the result,

- (i) The Criminal Revision Petition is dismissed. No costs.
- (ii) The judgment dated 05.07.2019 passed by the Principal Sessions Judge, Namakkal in C.A.No.56 of 2017 and the judgment dated 09.08.2017 passed by the Judicial Magistrate (FTC), Thiruchengode in S.T.C.No.218 of 2016 are confirmed.
- (iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate (FTC), Thiruchengode, 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.

18.04.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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Crl.R.C.No.1242 of 2019

R. HEMALATHA, J.
dm

To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Judicial Magistrate (FTC),
Thiruchengode.
- 3.The Public Prosecutor
Namakkal District.

Crl.R.C.No.1242 of 2019

18.04.2024