



Crl.R.C.No.1494 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

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

Crl.R.C.No.1494 of 2019

J.Nataraj

... Petitioner

vs.

C.Ganeshamurthy

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the judgment and orders passed in Crl.A.No.107 of 2017 dated 28.01.2019 by the Sessions Judge, Nilgiris at Udhagamandalam confirming the judgment and orders passed in C.C.No.174 of 2011 by the learned Judicial Magistrate, Udhagamandalam, dated 12.04.2017.

For Petitioner : Mr.S.Saravana Kumar
Legal Aid Counsel

For Respondent : No Appearance

ORDER

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Challenging the conviction and sentence passed by the learned Sessions Judge, Nilgiris at Udhagamandalam, in Crl.A.No.107 of 2017, dated 28.01.2019, confirming the conviction and sentence passed by the learned Judicial Magistrate, Udhagamandalam, in C.C.No.174 of 2011, dated 12.04.2017, 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 complainant in a nutshell is as follows :

The revision petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent/complainant on 18.04.2011 at Udhagamandalam and promised to repay the same on or before 18.09.2011. However, the accused did not keep up his promise and after much persuasion, the accused issued a Cheque (Ex.P1) bearing



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No.066379, dated 03.10.2011 drawn on Syndicate Bank, Udhagamandalam Branch, in favour of the complainant for a sum of Rs.5,00,000/-. When the cheque was presented by the complainant for encashment on 07.10.2011 through his bankers, viz., Axis Bank, Udhagamandalam, the same was returned for the reason "Funds Insufficient", as is seen from the cheque return memo dated 07.10.2011 (Ex.P2). Thereafter, the respondent/complainant issued a legal notice dated 18.10.2011 (Ex.P3) to the revision petitioner/accused calling upon him to pay the amount due under the Cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 22.10.2011, as is evidenced by the postal acknowledgement card (Ex.P4), the accused did not send any reply notice and did not also come forward to make good the payment due under the cheque.

4. Therefore, the complainant filed a private complaint under Section 200 Criminal Procedure Code before the Judicial Magistrate at Udhagamandalam, in C.C.No.174 of 2011 against the revision



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petitioner/accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused/revision petitioner under Section 204 Cr.P.C. On the appearance of the accused, the Judicial Magistrate furnished copies of the records to him under Section 207 Criminal Procedure Code. 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.

5. On the side of the complainant, the complainant examined himself as PW.1 and marked Ex.P1 to Ex.P4. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not examine any witness on his side.

6. The learned Judicial Magistrate, after analysing the oral and



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documentary evidence on record, vide his judgement and orders dated 12.04.2017, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for a period of six months and to pay a sum of Rs.5,00,000/- to the complainant towards compensation within a period of one month from the date of the judgment, in default, to undergo simple imprisonment for a period of one month.

7. Aggrieved over the same, the revision petitioner/accused filed an appeal in Crl.A.No.107 of 2017 before the learned Sessions Judge, Nilgiris at Udhagamandalam. The learned Sessions Judge, after analysing the oral and documentary evidence on record, confirmed the conviction and sentence passed by the Trial Court vide his judgement and orders dated 28.01.2019, aggrieved over which, the present criminal revision case is filed.

8. Heard Mr.S.Saravana Kumar, learned Legal Aid Counsel



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WEB.COM appearing for the petitioner.

9. Mr.S.Saravana Kumar, learned Legal Aid Counsel appearing for the revision petitioner/accused would contend that though the complainant alleged that he had lent a sum of Rs.5,00,000/- to the accused, did not adduce any bank statement in support of his contention. According to him, the revision petitioner/accused borrowed only a sum of Rs.50,000/- from the respondent/complainant and the same was repaid and that the complainant did not return the cheque (Ex.P1) issued by the accused. Both the Courts below did not take these aspects into consideration before convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, is his contention.

10. At the outset, it may be observed that the accused admitted his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved.

11. In the instant case, the accused did not issue any reply



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notice, though he received the statutory notice (Ex.P3) from the complainant. However, it was suggested to the complainant (P.W.1) during the course of cross examination that the accused borrowed only a sum of Rs.50,000/- from the complainant and the same was repaid by him. This was stoutly denied by P.W.1. According to the accused, the cheque issued by him during the time of borrowal of Rs.50,000/- from the complainant, was not returned by the complainant, even after full repayment. This has not been substantiated by the accused by adducing acceptable evidence. He did not also initiate any action for getting back the cheque from the complainant, even after the receipt of notice (Ex.P3) from the complainant. Both the Courts below had considered all the aspects of the case and in fact, the Appellate Court in Paragraph No.10 had made the following observations:-

“10. After completion of the evidence of prosecution, the appellant/accused was questioned u/s. 313(1)(b) of Cr.P.C, and at that time the appellant has denied the complaint against him. In order to support the above contention of the appellant that the complainant has



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misused the cheque given by him at the time of borrowal of a sum of Rs. 50,000/-, he has not let in any oral or documentary evidence. If really the alleged cheque has been misused by the complainant in this case, it is open to the appellant/accused to send a reply denying the averments made in the legal notice Ex.P3. On the other hand, the respondent has clearly established that Ex.P1 cheque was issued by the appellant towards clearing the loan amount of Rs. 5 lakhs borrowed by him and when Ex.P1 Cheque was presented for collection, it was dishonoured due to insufficient funds in the account of the appellant. Thereafter the respondent has followed the procedure contemplated under the Negotiable Instruments Act and initiated the private complaint case in time.”

12. It is pertinent to point out that this Court while dealing with revision under Section 397 of Cr.P.C., cannot act as a Second Appellate Court and cannot interfere with the concurrent findings recorded by both the Courts below, unless it is convincingly shown that the judgments passed by both the Courts below are perverse. There is nothing on record to came to the conclusion that both the Courts below had rendered a



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perverse finding. I do not see any reason to interfere with the same. In the circumstances, the conviction and sentence passed by the Trial Court is confirmed.

13. In the result,

- (i) The Criminal Revision Petition stands dismissed.
- (ii) The judgment dated 28.01.2019 passed by the learned Sessions Judge, Nilgiris at Udhagamandalam in Crl.A.No.107 of 2017 and the judgment dated 12.04.2017 passed by the Judicial Magistrate, Udhagamandalam in C.C.No.174 of 2011, are confirmed.
- (iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate, Udhagamandalam, 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.
- (iv) This Court places on record its appreciation to Mr.S.Saravana Kumar, learned Legal Aid Counsel, for his valuable assistance in



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deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to Mr.S.Saravana Kumar, towards his fee.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

- 1.The Sessions Judge,
The Nilgiris at Udhagamandalam.

- 2.The Judicial Magistrate,
Udhagamandalam.

Copy to:

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai – 600 104.



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R. HEMALATHA, J.
dm

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