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Crl.R.C.No.1428 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

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

Crl.R.C.No.1428 of 2019

P.Karthikeyan

... Petitioner

Vs.

1. M/s.Mohana Homes
Partnership Firm,
Having Office at,
No.C-270, Jagannathan Salai,
Periyar Nagar,
Chennai 600 081.

2. S.R.Magendran,
Partner,
M/s.Mohana Homes

...

Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 Criminal Procedure Code, to set aside the Judgment dated 10.09.2019 in CA.No.559 of 2018 passed by the V Additional Sessions Judge at Chennai reversing the Judgment, dated 22.05.2018 passed by the Metropolitan Magistrate, FTC-II, Allikulam, Egmore, Chennai 3 in C.C.No.6519/2015.

For Petitioner : Mr.S.Udhaya Kumar

For Respondents : Mr.B.Singaravelu,
Legal Aid Counsel



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ORDER

Challenging the Judgment and Orders, dated 10.09.2019 passed in C.A.No.559 of 2018 by the V Additional Sessions Judge, Chennai, the present Criminal Revision is filed by the petitioner/complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the complainant in a nutshell is as follows:

- i. The complainant and the accused entered into a construction agreement, dated 28.06.2013 and as per the agreement, the accused should hand over the second floor of the flat after completing construction, at Sembium Village, Perambur-Purasawakkam Taluk.
- ii. The total sale consideration was fixed at Rs.20,00,000/- out of which, a sum of Rs.2,00,000/- was paid to the accused on 29.04.2013 and another sum of Rs.1,00,000/- on 06.05.2013.
- iii. The accused promised the complainant that they would complete



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the construction within 7 or 8 months. However, they did not commence any construction activities. Therefore, the construction agreement was extended till 28.11.2014.

- iv. Subsequently, another sum of Rs.2,00,000/- was paid by the complainant to the accused.
- v. Even then, the accused did not commence the construction work and therefore, the complainant lodged a complaint with the Sembium Police Station against the second accused and in the enquiry, the second accused agreed to commence the construction activities.
- vi. Subsequently, the complainant agreed to repay a sum of Rs.6,00,000/- to the complainant and issued a cheque (Ex.P1) bearing No.259082, dated 30.04.2015 drawn on IDBI Bank, Periyar Nagar Branch, Chennai, for a sum of Rs.6,00,000/-.
- vii. When the complainant presented the cheque for collection on 30.04.2015 through his banker viz., State Bank of India, Balaji Nagar Branch, Chennai, the same was returned on 01.05.2015 for the reason 'insufficient funds', as is seen from the cheque return



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memo (Ex.P2).

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viii. Therefore, the complainant issued a statutory notice dated 19.05.2015 (Ex.P3) to the accused calling upon them to pay the amount due under the cheque (Ex.P1).

ix. Though the accused received the said statutory notice, as is evidenced by the postal acknowledgement card (Ex.P4), they did not come forward to make good the payment and did not also send any reply.

x. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., in C.C.No.6519/2015 before the Metropolitan Magistrate, FTC-II, Allikulam, Egmore against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act.

xi. The learned Metropolitan Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act, issued summons to the accused under Section 204 Cr.P.C.,

xii. On appearance of the accused, the copies of case records were furnished to him under Section 207 Cr.P.C. The substance of



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accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the matter was posted for trial.

xiii. In order to bring home the guilt of the accused, the complainant examined himself and marked Ex.P1 to Ex.P4.

xiv. The accused, when questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313 Cr.P.C., they denied of having committed any offence. The accused No.2 admitted that he had to pay a sum of Rs.6,00,000/- to the complainant and prayed for granting time to repay the same to the complainant. No witness was examined on the side of the respondents.

xv. After full contest, the learned trial Court Judge, after analysing the oral and documentary evidence on record, vide his Judgment dated 22.05.2018, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment for a period of one year and to pay a sum of Rs.12,00,000/- as compensation within a period of one month, in default to undergo Simple



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Imprisonment for a period of three months.

xvi. Aggrieved over the same, the accused filed an appeal in C.A.No.559 of 2018 before the V Additional Sessions Judge at Chennai.

xvii. The learned Sessions Judge vide his Judgment dated 10.09.2019, allowed the appeal and remanded the matter back to the trial Court for fresh disposal. His specific observation was that the accused were not given sufficient opportunity to cross examine P.W.1. Challenging the same, the present revision is filed by the complainant.

4. Heard Mr.S.Udhaya Kumar, learned counsel for the Revision petitioner and Mr.B.Singaravelu, learned legal aid counsel appearing for the Respondent.

5. Mr.S.Udhaya Kumar, learned counsel for the petitioner / complainant would contend that the second accused had not denied his signature on the cheque (Ex.P1) and therefore there is a presumption



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under Section 118 and 139 of the Negotiable Instruments Act. He would further contend that the second accused when questioned under Section 313 Cr.P.C., admitted his liability to pay a sum of Rs.6,00,000/- to the complainant and despite that the lower appellate Court on an appeal filed by the accused, had remanded the matter back to the trial Court for fresh disposal. His contention is that the trial Court had properly analysed the evidence on record and therefore there was no reason for the appellate Court to set aside the conviction and sentence and to remit the matter back to the trial Court and that too for the reason that the accused were not given sufficient opportunity to cross examine P.W.1. According to him, the accused in the instant case did not choose to cross examine P.W.1 and therefore the Judgment and orders, dated 10.09.2019 passed by the V Additional Sessions Judge, Chennai is liable to be set aside.

6. Per contra, Mr.B.Singaravelu, learned legal aid counsel appearing for the Respondents would contend that the lower appellate Court after analysing the evidence on record in proper perspective, had rightly remanded the matter back to the trial Court for fresh disposal and



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hence there is no reason for this Court to interfere with the same.

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7. At the outset, it may be observed that in the instant case the first accused M/s.Mohana Homes is represented by one of its partners, the 2nd accused. The 2nd Accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of the Negotiable Instruments Act, unless the contrary is proved. In the instant case, the accused did not issue any reply to the statutory notice even though he was in receipt of the notice sent by the complainant as is evidenced by the postal acknowledgement card (Ex.P4). More over, the 2nd accused at the time of questioning under Section 313 Cr.P.C., admitted that he is liable to pay a sum of Rs.6,00,000/- and requested the Court to give him time to pay the said amount. He did not choose to cross examine P.W.1 though he was given opportunity for the same. When the accused had admitted his liability and did not also cross examine P.W.1, there is no necessity for the lower appellate Court to remit the matter back to the trial court. More over the trial Court had properly analysed the evidence on record and had



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convicted the accused for the offence under Section 138 of the Negotiable Instruments Act. Hence, the Judgment and orders passed by the lower appellate Court, remitting the matter back to the trial Court is liable to be set aside and the conviction passed by the trial Court is confirmed.

8. Considering the circumstances of the present case, the sentence passed by the trial Court is modified as under:

“Simple Imprisonment for a period of six months and to pay a sum of Rs.6,00,000/- to the complainant towards compensation in default to undergo Simple Imprisonment for a period of three weeks”

9. In the result,

- i. the Criminal Revision Case is Partly allowed;
- ii. the Judgment and orders, dated 10.09.2019 in C.A.No.559 of 2018 passed by V Additional Sessions Judge at Chennai, is set aside;
- iii. the second accused is directed to undergo Simple Imprisonment for a period of six months and to pay a sum of Rs.6,00,000/- (Rupees



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Six lakhs only) to the complainant towards compensation, in default to undergo Simple Imprisonment for a period of three weeks;

- iv. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Metropolitan Magistrate (Fast Track Court-II), Allikulam, Egmore within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence;
- v. This Court places on record its appreciation to Mr.B.Singaravelu, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay the fees as per Rules.

25.06.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
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To



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1.The V Additional Sessions Judge,
Chennai.

2.The Metropolitan Magistrate
(Fast Track Court-II), Allikulam,
Egmore, Chennai - 3.

Copy to

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



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R. HEMALATHA, J.

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