



Crl.R.C.No.1517 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM

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

Crl.R.C.No.1517 of 2019

Y.Dennis

... Petitioner

Vs.

B.N.Natarajan

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 03.08.2019 passed in C.A.No.63/2018 by the Principal District and Sessions Judge, Tiruvallur, confirming the judgement and orders dated 23.03.2018 passed in S.T.C.No.84/2016 by the Judicial Magistrate, Fast Track Court, Ambattur.

For Petitioner : Mr.R.Thanigai Arasu

For Respondent : Ms.R.Nirmala



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ORDER

Challenging the judgment and orders dated 03.08.2019 passed by the learned Principal District and Sessions Judge, Tiruvallur, in C.A.No.63/2018 confirming the judgment and orders dated 23.03.2018 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur in S.T.C.No.84/2016, the present criminal revision case is filed.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present revision case would also be indicated, if necessary.

3. The revision petitioner is the accused in S.T.C.No.84/2016 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
Section 138 of N.I. Act	Simple Imprisonment for a period of eight months and to pay a sum of Rs.8,78,000/- as compensation under Section 357(3) Cr.P.C. to the



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<i>Conviction</i>	<i>Sentence</i>
	complainant within three months, in default, to undergo simple imprisonment for a period of two months.

4. The case of the respondent / complainant in a nutshell is as follows :

4.1. The complainant approached the accused for purchase of two spindle PLC machines who in turn gave quotation (Ex.D1) on 15.12.2011 for two spindle machines. The complainant raised a purchase order (Ex.P1) on the same date and also paid a sum of Rs.1,50,000/- towards part payment of purchase of a single spindle PLC by way of a cheque. The accused gave assurance to deliver the said machine before March 2012. The complainant thereafter approached the Indian Overseas Bank for obtaining a loan of Rs.8,78,000/- for purchase of spindle PLC machines. Accordingly, the bank transferred a sum of Rs.4,00,000/- on 27.02.2012 to the account of the accused by way of Demand Draft (Ex.P11). However, the accused did not deliver the machines to the



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complainant as promised by him. In the meanwhile, the bank transferred the balance amount of Rs.4,78,000/- on 27.06.2012 to the account of the accused by way of Demand Draft (Ex.P12). After much persuasion, the accused delivered a single spindle PLC on 09.12.2012 and it was also in an inutile condition. The accused did not deliver the other machine as promised by him and therefore, the complainant was forced to cancel the purchase order.

4.2. When the complainant approached the accused to repay the amount of Rs.8,78,000/- the accused issued six cheques (Ex.P2 series) drawn on Indian Overseas Bank, Padi Branch. However, the accused closed his bank account with Indian Overseas Bank and thereafter, issued a cheque (Ex.P3) bearing number 799791 dated 10.08.2015 drawn on Corporation Bank, Mogappair Branch for a sum of Rs.8,78,000/-.

4.3. When the complainant presented the cheque for collection through his bankers, namely, Indian Overseas Bank, Padi Branch, the same was returned for the reason 'Funds Insufficient' as is seen from the cheque Return Memo dated 12.08.2015 (Ex.P4 and Ex.P5).



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4.4. Thereafter, the complainant issued a legal notice dated 27.08.2015 (Ex.P6) to the accused calling upon the accused to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

4.5. Though the accused received the said legal notice as is evidenced by the postal acknowledgement card (Ex.P7), he did not come forward to make good the payment. He did not also send any reply.

4.6. Therefore, the respondent/complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Ambattur under Section 200 Cr.P.C. against the revision petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in S.T.C.No.84/2016.

4.7. The learned Judicial Magistrate, Fast Track Court, Ambattur took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.



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4.8. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

4.9. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P14.

4.10. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. The accused examined himself and one another witness and marked Ex.D1 to Ex.D8.

4.11. After full trial, the learned trial court judge convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him as stated in Paragraph No.3.

4.12. Aggrieved over the same, the accused filed an appeal in C.A.No.63/2018 before the Principal Sessions Court, Tiruvallur. The



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learned Principal Sessions Judge, Tiruvallur after analysing the evidence on record, confirmed the findings recorded by the trial court and dismissed the appeal, as against which the present criminal revision case is filed by the accused.

5. Heard Mr.R.Thanigai Arasu, learned counsel for the revision petitioner and Ms.R.Nirmala, learned counsel for the respondent.

6. Mr.R.Thanigai Arasu, learned counsel for the revision petitioner contended that the complainant had not proved any legally enforceable debt on the date of filing of the complaint and this has not been taken into consideration by both the courts below. The accused had lodged a complaint (Ex.D4) with the Inspector of Police, Korattur Police Station alleging that on 31.07.2015 the complainant entered his office at about 06.00 P.M. along with five persons and took away nine signed blank cheques from his office and that the police after conducting an enquiry compromised the issue between the complainant and the accused. According to the learned counsel, when it is alleged that the



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complainant had stolen nine blank cheques from his office and also lodged a complaint with the police in this regard, both the courts below were wrong in convicting the accused.

7. Per contra, Ms.R.Nirmala, learned counsel for the respondent would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Revision Case.

8. It is seen from the records that initially the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur acquitted the accused for the offence punishable under Section 138 of N.I. Act vide her judgement and orders dated 14.09.2016 and on an appeal filed by the complainant before the Principal Sessions Court, Tiruvallur in C.A.No.56/2016, the case was remitted back to the trial court for considering the case of the complainant afresh. Accordingly, the learned Judicial Magistrate after analysing the evidence on record convicted and



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sentenced the accused on 23.03.2018. The appeal filed by the accused before the Principal Sessions Court, Tiruvallur in C.A.No.63/2018 was also dismissed and the conviction and sentence passed by the trial court judge was confirmed vide his judgement and orders dated 03.08.2019, aggrieved over the same, present criminal revision case is filed.

9. At the outset it may be observed that the accused had not denied his signature on the cheque (Ex.P3). It is needless to say that once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. This clearly shows that the onus of proof lies with the accused. The specific contention of the complainant is that he approached the accused for purchase of spindle PLC machines and also obtained a loan from Indian Overseas Bank to the tune of Rs.8,78,000/-. The bank had also sanctioned a loan and transferred a sum of Rs.4,00,000/- on 27.02.2012 to the account of the accused by way of Demand Draft (Ex.P11) and transferred the balance amount of Rs.4,78,000/- on 27.06.2012 through another Demand Draft (Ex.P12). This has not been denied by the



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accused. The Demand Drafts (Ex.P11 and Ex.P12) favouring the accused also proves that the accused received a sum of Rs.8,78,000/- from Indian Overseas Bank. Therefore, it cannot be stated that there was no legally enforceable debt on the date of filing of the private complaint.

10. The next ground urged by the learned counsel for the revision petitioner is that the revision petitioner had lodged a complaint (Ex.D4) with the Inspector of Police, Korattur Police Station, stating that the complainant had stolen nine cheques from his office and that the matter was compromised by the police officials.

11. It is pertinent to point out that the revision petitioner / accused had not adduced sufficient evidence to show that he actually lodged a complaint with the Inspector of Police. The challan issued by the police had not been filed before the trial court. The accused had not also filed any document to show that the police conducted an enquiry and compromised the issue between him and the complainant. The police officials have not also been examined by the accused. In the



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circumstances, no credence can be attached to the complaint (Ex.D4).

Moreover, in the police complaint nowhere it is stated that the present cheque (Ex.P3) bearing number 799791 dated 10.08.2015 drawn on Corporation Bank was taken away by the accused.

12. Both the Courts below had analysed the oral and documentary evidence in the right perspective and by no stretch of imagination, the same can be termed as perverse. It is appropriate to note that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C cannot act as a second appellate court and thus cannot interfere with the concurrent findings recorded by both the courts below.

13. In the result,

- i. The Criminal Revision Case is dismissed.
- ii. The judgment and orders dated 03.08.2019 in C.A.No.63/2018 passed by the Principal District and Sessions Judge, Tiruvallur and the judgement and orders dated 23.03.2018 in S.T.C.No.84/2016 passed by the Judicial Magistrate, Fast Track Court (Magisterial



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iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, 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.

14.06.2024

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

- 1.The Principal District and Sessions Judge, Tiruvallur.
- 2.The Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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