



Crl.R.C.Nos.1485 & 1486 of 2019
and Crl.M.P.Nos.18833 & 18836 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.R.C.Nos.1485 & 1486 of 2019
and Crl.M.P.Nos.18833 & 18836 of 2019

R.Mohan ... Petitioner in both revision case
Vs.
K.Palanisamy ... Respondent in both revision case

Common Prayer : Criminal Revision filed under Section 397 r/w. 401 of the Criminal Procedure Code to set aside the judgment and orders dated 09.10.2019 in C.A.Nos. 45 & 42 of 2018 on the file of the Court of Sessions, (Fast Track Mahila) Judge, Namakkal confirming the judgment and orders dated 04.04.2018 in S.T.C.No.77/2017 on the file of the Judicial Magistrate, Fast Track Court, Tiruchengode.

In both Criminal Revision :

For Petitioner : Mr.C.S.Saravanan
For Respondent : Mr.S.Viswanathan
for M/s.Dass & Viswa Associates



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COMMON ORDER

Challenging the conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Namakkal in C.A.Nos.45 & 42 of 2018 confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court, Tiruchengode. in S.T.C.No.77/2017, the present criminal revision cases are 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 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.4,00,000/- from the respondent/complainant on 20.12.2015 as a hand loan. He assured that he would repay the same within two months. In order to discharge the liability, the present revision petitioner/accused issued a cheque bearing No.553140 dated 10.02.2016 (Ex.P1) drawn on



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Karur Vysya Bank, Tiruchengode Branch for a sum of Rs.4,00,000/- to the respondent/complainant with a request to the complainant to present the cheque on 22.02.2016 for encashment. When the complainant presented the cheque for collection through his banker viz., the ICICI Bank, Tiruchengode Branch, the cheque was returned on 23.02.2016 with an endorsement "Funds Insufficient", as is seen from the cheque return memo (Ex.P2). When the complainant questioned the accused in this regard, the latter requested him to present the cheque once again on 05.04.2016. On 12.04.2016, the cheque was returned for the very same reason as is seen from the cheque return memo (Ex.P4). Therefore, the respondent/complainant issued a statutory notice dated 10.05.2016 (Ex.P5) to the revision petitioner/accused to pay the amount due under the cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. Though the revision petitioner/accused received the statutory notice on 11.05.2016, as is evidenced by the postal acknowledgement card (Ex.P6), he did not come forward to make good the payment and did not also send any reply.



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4. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Tiruchengode under Section 200 Cr.P.C. against the present revision petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in S.T.C.No.77/2017. The learned Judicial Magistrate, Fast Track Court, Tiruchengode, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused/revision petitioner and on his appearance furnished copies of records 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 and the case was posted for trial.

5. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P6. 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 adduce any oral / documentary evidence on his side.



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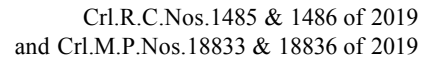


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6. After analysing the evidence on record, the learned trial court judge found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him as detailed hereunder :

<i>S.No.</i>	<i>Offences under which convicted</i>	<i>Sentence</i>
1	Section 138 of N.I. Act	Simple imprisonment for six months and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for one months.

7. Aggrieved over the same, the revision petitioner/accused filed an appeal in C.A.No.42/2018 before the Court of Sessions (Fast Track Mahila) Court, Namakkal and the complainant filed an appeal in Crl.A.No.45/2018 seeking payment of compensation from the accused. The Court of Sessions (Fast Track Mahila) Judge, Namakkal, vide her orders dated 09.10.2019, dismissed the appeal filed by the accused in C.A.No.42/2018 and awarded a compensation of Rs.50,000/- to the complainant in Crl.A.No.45/2018.



9. The contention of the accused is that the cheque (Ex.P1) was given to the complainant only as a security as he and the complainant were doing lorry business jointly. This was actually suggested to P.W.1 during the course of cross examination and it was stoutly denied by him. The accused had not also proved that the cheque was given only as a security by way of adducing acceptable evidence. There is absolutely no record to show that both the complainant and the accused were doing a joint business.

10. Both the Courts below after analysing the evidence on record had concurrently held that the accused is guilty of the offence



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Section 138 of N.I. Act. The appellate court in Crl.A.No.42/2018 in

paragraph No.11 had observed thus :

"11.Once presumption arises in favour of the holder of the cheque, under Section 139 NI Act the burden shifts and it is on the accused to rebut the presumption that the cheque was not given for discharge of debt or liability. It is true that the duty of the accused to discharge the burden is not as high as that of the complainant. The presumption is a rebuttal presumption and it can be rebutted by preponderance of probabilities and the accused need not prove beyond all reasonable doubts. It is to be seen as to whether the accused has rebutted the presumption through clear and cogent evidence as held in the citation reported in 2009 (2) SCC 513 Kumar Exports Vs Sharma Carpets wherein it is held that mere denial regarding existence of debt shall not serve any purpose. In this case the appellant has not filed any record to show that he had not received Rs.4 lakhs from the complainant and that the Ex.P1 cheque was not given in discharge of the debt and that it was given only as a security to the complainant while doing lorry business. The burden is more heavy when the complainant has denied the suggestion put to him in this regard. But the accused has not taken any



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WEB COPY *efforts to prove that the Ex.P1 cheque was not given by him in discharge of debt to the complainant and that it was given only a security."*

The above observations cannot be found fault with. Therefore the conviction of the accused by both the Courts below for the offence punishable under Section 138 of the N.I. Act is perfectly in order. As regards the sentence both the Courts below had sentenced the accused to undergo simple imprisonment for a period of six months and to pay a fine of Rs.5,000/- in default, to undergo one month simple imprisonment.

11. The appellate court while dealing with the appeal in Crl.A.No.45/2018 which was filed by the complainant for payment of entire cheque amount towards compensation did not give adequate reasons for directing the accused to pay a compensation of Rs.50,000/- to the complainant. The appellate court in Crl.A.No.45/2018 has observed thus:

"6.The only point for determination in this criminal appeal in that the accused has not been severely punished and the complainant has not been compensated.



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7. *The arguments on both side is heard and records perused. The lower court has found the accused guilty and sentenced him to undergo imprisonment for the offence u/s.138 NI Act six months simple imprisonment and fine of Rs.5,000/- in default further one month simple imprisonment. Aggrieved by this the appellant who is the complainant in the trial court has preferred this appeal. The complainant's stand is that the accused has not been severely punished, and that no compensation order has been passed and hence the accused is to be directed to pay compensation of double the cheque amount and has to be severely punished.*

8. *On perusal of the records and the lower court judgment it is evident that the case has been tried summarily and the accused has been sentenced to undergo six months simple imprisonment and fine of Rs.5,000/- in default further one month simple imprisonment for the offence u/s.138 NI Act. Under Section 138 of the NI Act it is stated that the accused when found guilty can be punished upto 2 years. The accused herein is sentenced to six months imprisonment by the trial Court which seems to be reasonable hence this courts decides that there is no necessity for interference in the sentence of imprisonment and as there is no order as to compensation, this Court orders the accused to pay a compensation of*



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WEB COPY Rs.50,000/- to the complainant.

9. In the result, the appeal is dismissed with the finding that the accused in STC.No.77/2017 Judicial Magistrate Fast Track Court (Magisterial Level) Tiruchengode is to pay a compensation of Rs.50,000/- (Rupees Fifty Thousand Only) to the complainant, intimation to this Court to be sent."

12. It is seen from the above that the appellate court did not assign proper reasons for having come to the conclusion that the accused is liable to pay only a sum of Rs.50,000/- towards compensation to the complainant. Hence, the orders in C.A.No.45/2018 is set aside and the appellate court namely the Court of Sessions, (Fast Track Mahila) Judge, Namakkal is directed to answer the issue in C.A.No.45/2018 only with regard to the compensation to be paid by the accused.

13. In the result,

- i. The Criminal Revision in C.A.No.42/2018 is dismissed.
- ii. The conviction and sentence passed by both the Courts below is



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- iii. The orders passed in C.A.No.45/2018 is set aside and the matter is remitted back to the Court of Sessions to deal with the same afresh.
- iv. The revision petitioner/accused shall surrender before the Judicial Magistrate, Fast Track Court, Tiruchengode, 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.
- v. The connected Criminal Miscellaneous Petitions are closed.

01.04.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

- 1.The Court of Sessions, (Fast Track Mahila) Judge, Namakkal.
- 2.The Judicial Magistrate, Fast Track Court, Tiruchengode.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

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