



CrI.R.C.No.261 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.261 of 2024

Maharishi Arulgnana Jothi,
Sabathareshi Asharam by its Administrative Director,
No.6/38, Thrichy Road, Kuppan Palayam,
Vasanthapuram,
N.Puthu patty post,
Namakkal District.

... Petitioner

Vs.

Rajavelu

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to set aside the order dated 20.09.2023 made in C.A.No.23 of 2021 on the file of the Principal District and Sessions Judge, Thiruvarur confirming the conviction and sentence dated 26.11.2021 made in STC.No.36 of 2015 on the file of the Fast Track Judicial Magistrate.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.K.Selvaraj

ORDER



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The petitioner was convicted by the learned Fast Track Judicial Magistrate, Thiruthuraipoondi (Trial Court) *vide* judgment, dated 26.11.2021 in S.T.C.No.36 of 2015 and sentenced to undergo one year Simple Imprisonment and to pay a sum of Rs.25,00,000/- as compensation to the respondent/complainant in default to undergo two months Simple Imprisonment for offence under Section 138 of the Negotiable Instruments Act, 1881. Challenging the same, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Thiruvarur (Lower Appellate Court) in Crl.A.No.23 of 2021 and the same was dismissed on 20.09.2023 confirming the judgment of the Trial Court. Aggrieved over the same, the present criminal revision case is filed.

2.The Brief facts of the case is that the petitioner/accused, Administrative Director of Sabathareshi Asharam, Kuppanpalayam, Namakkal District is known to the respondent/complainant. The petitioner received Rs.20,00,000/- from the respondent on 30.08.2013 on assurance that he would execute a sale deed for the property in survey No.232-9A/1 situated at Veedukatti village, Theevammapuram Taluk belonging to one Balasubramaniyam. The petitioner is his power agent. The petitioner



showing the registered power of attorney in document No.171 of 2009, the petitioner convinced the respondent. Earlier, the respondent sold a property in survey No.80/2 of 11,250 sq.ft on 28.09.2013 for sale consideration of Rs.23,00,000/-. From that amount, the respondent handed over Rs.20,00,000/- to the petitioner. Further, agreement entered by the petitioner with the respondent that in the event of unable to execute the sale deed for any reason, the amount would be returned to the respondent. The petitioner handed over the cheque, dated 23.01.2014 (Ex.P1) for Rs.20,00,000/- drawn on ICICI Bank to the respondent. When the cheque (Ex.P1) presented for encashment, the same was returned for the reason 'Insufficient Funds' with a memo (Ex.P3), dated 31.01.2014. Thereafter, statutory notice (Ex.P4) issued on 17.02.2014 to the petitioner. The statutory notice could not be served for the reason the petitioner was not available in the address mentioned and the complaint was filed before the Trial Court. During trial, the respondent/complainant examined himself as PW1 and marked eight documents as Exs.P1 to P8. Ex.P6 is the power of attorney, Ex.P7 is the sale deed and Ex.P8 is the sale agreement. On the side of the petitioner/accused, DW1 and DW2, Assistant Managers of ICICI Bank and Indian Overseas Bank examined and Exs.D1 to D3 marked. On conclusion of trial, the Trial



Court convicted the petitioner as stated above. The Lower Appellate Court confirmed the conviction.

3.The learned counsel for the petitioner submitted that the Courts below failed to note the fact that the statutory notice (Ex.P4) returned as not claimed and there was no proper service of notice. In the complaint, there is no plea by the respondent that the notice was taken to the correct address and thereafter, notice returned, hence it cannot be taken as deemed service. In the complaint and evidence of the respondent, there is no whisper how the respondent gave such huge amount of Rs.20,00,000/- to the petitioner and how he had resource to give such huge amount. The burden of proof that the cheque (Ex.P1) was issued in discharge of the legally enforceable debt not proved by the respondent. The petitioner is only a power agent of Balasubramaniam is proved by Ex.P6, hence the petitioner cannot be made liable for non fulfilment of the sale agreement. An unregistered sale agreement (Ex.P8) is only a photostat copy and not proved in the manner known to law. The photostat copy of the document and the certified copy of the documents marked without following the principles laid down in Sections 65 and 66 of the Indian Evidence Act, 1872. Hence, the Trial Court



relying upon Exs.P6 to P8 in convicting the petitioner is not proper.

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4.The learned counsel further submitted that the mandatory notice as well as Court summons not served to the petitioner in the address mentioned. The petitioner filed a petition under Section 91 Cr.P.C seeking production of document by the respondent to show the source of income but the same was dismissed by the Trial Court. The petitioner agitated the same before this Court in CrI.O.P.No.12762 of 2017 and this Court by order, dated 08.07.2019 observed adverse inference can be drawn under Section 114 of the Indian Evidence Act, 1872. Thereafter only, the respondent filed a petition and marked Exs.P7 and P8. Though the same was objected by the petitioner, the same was not considered by the Trial Court. Hence, the foundational facts not proved. The specific case of the petitioner is that the respondent is not known to him and the cheque (Ex.P1) was given to one Bhavani towards mortgage of the property which came in the hands of the respondent. The respondent filled up the cheque (Ex.P1), misused the same and filed the complaint before the Trial Court. The Assistant Managers of the ICICI Bank and Indian Overseas Bank examined as DW1 and DW2 and statement of accounts for the period 2012-14 marked as Exs.D2 & D3. The



total transaction is only around Rs.2,00,000/- and the available balance is only Rs.2,253/- during the relevant period. He further submitted that the petitioner is not shown as Managing Trustee of Sabathareshi Asharam and the petitioner probablized his defence. But the Courts below gave a finding that the petitioner to disprove the case ought to have entered into the witness box. Hence, he prays to set aside the conviction and acquitted him of all charges.

5.The learned counsel for the respondent/complainant submitted that though the complaint filed in the year 2015, the petitioner successfully dragged the progress of trial for more than six years, with great difficulty, the Trial Court concluded the trial and passed the judgment in the year 2021. During trial, the respondent examined himself as PW1 and marked eight documents Exs.P1 to P8. Ex.P1 is the cheque, Exs.P2 & P3 are the Bank Return Memos, Ex.P4 is the statutory notice sent to the address of the petitioner. The notice was sent as early as on 17.02.2014 and it was kept pending for more than fifteen days for want of delivery. The petitioner deliberately avoided the notice and thereafter only it was returned. To the known address, the notice was taken. As per the General Clauses Act, notice



to the known address is sufficient. To substantiate the same, the learned counsel for the respondent relied on the decision of the Hon'ble Apex Court in the case of “*N.Parameswaran Unni v. G.Kannan and another* reported in (2017) 5 SCC 737”. It is not the case of the petitioner that no such address exist and the petitioner never used the address shown in Ex.P4. The only contention of the petitioner is that he was not available in the address and not aware about the notice. In fact in this case, a registered power of attorney in document No.171 of 2009 was handed over by the petitioner to gain confidence to show that the petitioner is the power of attorney of one Balasubramaniam and the property is very much available and he was authorized to execute the sale deed. On that promise, the respondent's wife on 29.08.2013 sold a property and on receipt of the sale consideration of Rs.23,00,000/-, Rs.20,00,000/- was given to the petitioner as per the sale agreement, dated 30.08.2013 (Ex.P8). On receiving back Ex.P8, the cheque (Ex.P1) was issued. This was the consistent stand of the respondent throughout from the stage of notice, complaint, sworn statement and in his evidence.

6.He further submitted that the petitioner not denied Exs.P6 to P8, but



only takes a stand that they are certified and photostat copies. Added to it, the cheque (Ex.P1) and the signature found in it not denied by the petitioner.

But takes a stand that the said cheque was given to one Bhavani and the petitioner not taken any steps to examine the said Bhavani. He further takes a defence that the numerical two found in the date of the cheque and numerical two found in the amount of Rs.20,00,000/- differs in writing and the colour of the ink. If that being so, the petitioner ought to have invoked Section 45 of the Indian Evidence Act, 1872, but not done so. The contention now raised by the petitioner already raised before the Trial Court as well as Lower Appellate Court and the same was considered both on legal and factual aspects. Hence, there is no error or perversity to interfere with the findings of the Courts below.

7.This Court considered the rival submissions and perused the materials available on record.

8.The issuance of the cheque (Ex.P1) and the signature in it not disputed by the petitioner. His only defence is that the cheque was given to one Bhavani at the time of mortgaging the property. But the said Bhavani



not examined as witness in this case and no steps taken by the petitioner in this regard. The other contention of the petitioner is that there is difference in the numerical two found in the date and the cheque amount. The Courts below considered this contention and rejected the same. As regards service of notice, the notice sent to the known address to the respondent. The address shown in Exs.P6 and P8 and the address of the notice are one and the same. The notice returned for the reason that the petitioner was not available. As per Section 27 of the General Clauses Act, it is to be construed as deemed service. The other contention of the petitioner that the respondent has got no financial capability and for which he examined DW1 and DW2 and marked Exs.D1 & D2 no way helpful to the petitioner in probalizing the defence. Exs.P6 to P8 confirmed that the petitioner acted as power agent of one Balasubramaniam to sell a property and to deal with the property. Based on Ex.P6, the petitioner executed the sale agreement (Ex.P8). The contention made that they are secondary evidence cannot be considered as primary evidence, is not sustainable. These documents not objected at the time of marking. Further the case does not rest on these documents (Exs.P6 to P8). It is only an attendant circumstantial fact to support the respondent's contention. The primary documents are Exs.P1 to P4 which have been



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proved in the manner known to law. Thus, the petitioner's contention considered both on legal and factual aspects by the Courts below and rightly dismissed the petitioner's contention and convicted the petitioner.

9.In view of the above, this Court does not find no merits in the submissions of the learned counsel for the petitioner and this Court is not inclined to interfere with the well reasoned judgments of the Trial Court, dated 26.11.2021 in S.T.C.No.36 of 2015 and the Lower Appellate Court, dated 20.09.2023 in Crl.A.No.23 of 2021. The same are hereby confirmed. Accordingly, this criminal revision case stands dismissed.

10.The Trial Court is directed to secure the petitioner to undergo the sentence of imprisonment and ensure payment of compensation imposed in the judgment, dated 26.11.2021 in S.T.C.No.36 of 2015.

26.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

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- 1.The Principal District and Sessions Judge,
Thiruvarur.
- 2.The Fast Track Judicial Magistrate,
Thiruthuraipoondi.



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M.NIRMAL KUMAR, J.

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