



Crl.R.C.No.1523 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

CORAM

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

Crl.R.C.No.1523 of 2019

V.Maa.Ramesh

... Petitioner

vs.

K.Nagalakshami

... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, praying to set aside the judgement and orders dated 23.10.2019 passed in C.A.No.389 of 2018 by the 1st Additional District and Sessions Judge, Erode confirming the judgment and orders dated 22.11.2018 passed in S.T.C.No.114 of 2017 by the Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Ms.S.Shiva Priya
for M/s.P.Muthukumarasamy



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ORDER

Challenging the conviction and sentence passed by the learned 1st Additional District and Sessions Judge, Erode in C.A.No.389 of 2018, dated 23.10.2019, 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.

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

- (i) The accused borrowed a sum of Rs.2,50,000/- from the complainant on 15.10.2016 and in order to discharge the said amount, he (accused) issued a post-dated Cheque (Ex.P1) bearing No.243973, dated 15.12.2016 for a sum of Rs.2,50,000/- drawn on Indian Overseas Bank, Thirunagar Colony Branch, Erode-3.
- (ii) When the cheque was presented by the complainant for collection on 16.12.2016 through her bankers viz., Canara Bank,



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Veerappanchatram Branch, Erode, the same was returned on 22.12.2016 for the reason 'funds insufficient', as is seen from the cheque return memo (Ex.P2).

- (iii) Thereafter, the complainant issued a Legal Notice on 27.12.2016 (Ex.P3) demanding the latter to pay the amount due under the Cheque within 15 days from the date of receipt of the legal notice.
- (iv) According to the complainant, though the accused received the said notice on 28.12.2016 as is evidenced by the postal acknowledgement card (Ex.P4), he did not come forward to make good the payment and did not also send any reply.
- (v) Therefore, the complainant filed a private complaint under Section 200 of the Code of Criminal Procedure before the Judicial Magistrate, Fast Track Court No.I, Erode, in S.T.C.No.114 of 2017 against the accused/revision petitioner for the offence punishable under Section 138 read with 142 of Negotiable Instruments Act, 1881.
- (vi) The learned Judicial Magistrate took cognizance of the offence and



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issued summons to the accused under Section 204 of 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 accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty. Therefore, the case was posted for trial.

(vii) The complainant examined herself as PW.1 and marked Ex.P1 to Ex.P4.

(viii) The circumstances appearing in evidence against the accused were put to the accused under Section 313 Criminal Procedure Code and the accused denied of having committed any offence. However, he did not examine any witness on his side.

(ix) The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, vide his judgment dated 22.11.2018 convicted the accused for an offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a sum of Rs.1,00,000/- to the complainant towards



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compensation under Section 357(3) of Criminal Procedure Code in default, to undergo simple imprisonment for a further period of two months.

- (x) Aggrieved over the judgment dated 22.11.2018 passed by learned Trial Court Judge, the accused filed an appeal in C.A.No.389 of 2018 before the I Additional District and Sessions Judge, Erode.
- (xi) The learned Sessions Judge, after analysing the oral and documentary evidence on record, concurred with the findings of the Trial Court and confirmed the conviction and sentence vide his judgment and orders dated 23.10.2019, aggrieved over which, the present criminal revision case is filed.

4. Mr.C.S.Saravanan, learned counsel appearing for the revision petitioner/accused contended that the complainant did not adduce any documentary evidence to prove her case against the accused except by filing the Cheque (Ex.P1). Therefore, he prayed for setting aside the conviction and sentence passed by the Courts below.



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5. Per contra, Ms.S.Shiva Priya, learned counsel appearing for the respondent/complainant contended that both the Courts below after appreciating the oral and documentary evidence adduced on both sides, rightly come to the conclusion that the accused had committed offence under Section 138 of the Negotiable Instruments Act, 1881 and there is no reason for this Court to interfere with the same.

6. 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 the Negotiable Instruments Act, 1881, unless the contrary is proved by the accused.

7. In the instant case, the accused did not issue any reply notice to the statutory notice issued by the complainant. A perusal of the records shows that the complainant (PW.1) has not at all been cross examined by the accused on any aspect. Therefore, the evidence of PW.1 remains un rebutted. Even at the stage of appeal in the Appellate Court, the



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present revision petitioner/accused did not file any application to allow him to cross examine PW.1.

8. Moreover, even during the questioning of the accused under Section 313(1)(b) of Criminal Procedure Code, he had stated that he is ready to settle the amount to the complainant. Thus, there is absolutely no defence at all. In the circumstances, I do not see any reason to interfere with the concurrent findings recorded by both the Courts below.

9. In the result,

- (i) The Criminal Revision Petition is dismissed. No costs.
- (ii) The judgment dated 23.10.2019 passed by the 1st Additional District and Sessions Judge, Erode in C.A.No.389 of 2018 and the judgment dated 22.11.2018 passed by the Judicial Magistrate, Fast Track Court No.1, Erode in S.T.C.No.114 of 2017, are confirmed.



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(iii) The revision petitioner/accused shall surrender before the learned Judicial Magistrate, Fast Track Court No.1, Erode, 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.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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- To
- 1.The 1st Additional District and Sessions Judge,
Erode.
 - 2.The Judicial Magistrate,
Fast Track Court No.1,
Erode.



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R. HEMALATHA, J.

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