



Crl.R.C.(MD) No.133 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.R.C.(MD) No.133 of 2019

and

Crl.M.P.(MD) No.2237 of 2019

Krishnamoorthy

... Petitioner

Vs.

Murugavel

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w. Section 401 of the Code of Criminal Procedure, 1973, praying to set aside the conviction and sentence passed by the learned III Additional District and Sessions Judge, Thanjavur @ Pattukottai in Crl.A.No.72 of 2018 on 31.01.2019, confirming the conviction and sentence passed by the learned Judicial Magistrate/Fast Track Court, Pattukottai, Thanjavur District in S.T.C.No.25 of 2015, by its Judgment dated 07.07.2018, and acquit the petitioner/accused.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.D.R.Murugesan

ORDER

This Criminal Revision Case is filed by the revision petitioner challenging the Judgment and Orders dated 31.01.2019 passed by the



Crl.R.C.(MD) No.133 of 2019

learned III Additional District and Sessions Judge, Thanjavur at Pattukottai [hereinafter referred to as 'Appellate Court' for the sake of convenience] in C.A.No.72 of 2018 confirming the Judgment and Orders dated 07.07.2018 passed by the learned Judicial Magistrate (Fast Track Court), Pattukottai [hereinafter referred to as 'Trial Court' for the sake of convenience] in S.T.C.No.25 of 2015.

2. For the sake of convenience, the revision petitioner is referred to as 'accused' and the respondent is referred to as 'complainant'.

3.The brief facts of the case of the complainant are as follows:

(a) The accused borrowed a sum of Rs.1,50,000/- from the complainant for his urgent family expenses on 02.11.2014, and agreed to repay the said amount within one month. When the complainant approached the accused on 04.12.2014 for repayment, the latter issued a Cheque dated 05.12.2014 bearing No.000018 drawn on Karur Vysya Bank, Pattukottai Branch for a sum of Rs. 1,50,000/-. When the complainant presented the said Cheque on 08.12.2014 through his banker namely, Indian Overseas Bank, Perumagalur Branch, the same was returned for the reason 'insufficient funds' and therefore, the complainant issued a statutory notice dated 07.01.2015



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Crl.R.C.(MD) No.133 of 2019

to the accused and the same was received by the accused on 09.01.2015. Even after receipt of the said notice, the accused did not come forward to make good the payment and also did not issue any reply notice and therefore, the complainant filed a private complaint under Section 200 of the Criminal Procedure Code, 1973 before the Judicial Magistrate Court, Pattukottai in S.T.C.No.25 of 2015 for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

(b) On appearance of the accused, the learned Judicial Magistrate furnished copies of the records under Section 207 of the Criminal Procedure Code, 1973 to the accused and questioned him with regard to the substance of accusation made against him by the complainant in his private complaint. Since the accused denied the offence, the case was posted for trial. The complainant examined himself and marked Ex.P1 to Ex.P4. The accused examined himself and marked Ex.R1 to Ex.R4. The learned Judicial Magistrate, after questioning the accused with regard to the incriminating circumstances appearing in evidence against him, under Section 313 of the Criminal Procedure Code, 1973, and after hearing both sides, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 on the following grounds:



Crl.R.C.(MD) No.133 of 2019

- i. The accused had admitted his signature on the Cheque and therefore, there is a presumption under Section 118 of the Negotiable Instruments Act, 1881.
- ii. The accused did not issue any reply notice even though he was in receipt of the notice issued by the complainant and therefore, an adverse inference has got to be drawn against him.

(c) The learned Judicial Magistrate convicted the accused under Section 255(2) of the Criminal Procedure Code, 1973 and sentenced him to undergo Simple Imprisonment for one year and to pay a Compensation of Rs.1,50,000/- to the complainant under Section 357 of the Criminal Procedure Code, 1973, in default to pay the said amount, to undergo Simple Imprisonment for a period of two months.

(d) Aggrieved over the Judgment and Orders passed by the trial court, the accused preferred an appeal before the III Additional Sessions Judge, who after analyzing the oral and documentary evidence, dismissed the appeal filed by the accused and confirmed the conviction and sentence passed by the Trial Court. Challenging the same, the present Criminal Revision Case is filed.



Crl.R.C.(MD) No.133 of 2019

4. Mr.S.Deenadhayalan, learned counsel for the revision petitioner/accused would contend that the accused and the complainant were working in a Tractor Company and the accused handed over 18 Cheques to a Sales Representative of the Tractor Company and one of the said Cheques was misused by the present complainant for the purpose of filing a private complaint under Section 200 of the Criminal Procedure Code, 1973. It is also his contention that the complainant had contradicted his own versions with regard to place of payment of money by deposing that he paid the money to the accused in his house. However, during the course of cross-examination, he deposed that money was paid to the accused only in the Tractor Company. He would further contend that both the Courts below had wrongly convicted the accused and therefore prayed for acquitting the revision petitioner.

5. *Per contra*, Mr.D.R.Murugan, learned counsel appearing for the respondent/complainant would contend that both the Courts below after appreciating the oral and documentary evidence adduced by the complainant and accused had rightly convicted the accused and therefore, no interference is warranted. He therefore prayed for dismissal of this Criminal Revision Case.



Crl.R.C.(MD) No.133 of 2019

6. At the outset, it may be observed that the accused has admitted his signature on the Cheque. Once the signature is admitted, there is a presumption under Section 118 of the Negotiable Instrument Act, 1881 unless the contrary is proved. In the instant case, the accused has not rebutted the presumption in favour of the holder of the Cheque.

7. Though the contention of the accused is that he handed over 18 Cheques to one of the Sales Representatives of the Tractor Company, in which, he and the complainant are working, the said Sales Representative has not been examined as a witness before the Trial Court. Moreover, it is not known as to why the accused did not give a complaint to the police immediately in this regard. If cheque leaves are misused by someone, a common prudent man would take necessary action against the wrong doer. In the instant case, the complainant had issued a notice to the accused demanding the latter to pay the amount due under the cheque. Even after that, the accused did not lodge any police complaint against the complainant and he did not issue any reply notice also.

8. In such circumstances, all the observations made by the Courts below are perfectly in order and I do not find any reason to interfere with



Crl.R.C.(MD) No.133 of 2019

the concurrent findings recorded by both the Courts below. Therefore, the present Criminal Revision Case is liable to be dismissed.

9. The accused is directed to appear before the concerned Judicial Magistrate to serve the remaining period of sentence, within a period of 15 days from the date of receipt of a copy of this order, failing which, the learned Judicial Magistrate shall take steps to secure the presence of the accused.

10. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

09.01.2024

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

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Crl.R.C.(MD) No.133 of 2019

To

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- 1.The III Additional District and Sessions Judge,
Thanjavur at Pattukottai.
- 2.The Judicial Magistrate [Fast Track Court],
Pattukottai, Thanjavur District.



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Crl.R.C.(MD) No.133 of 2019

R.HEMALATHA, J.

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Crl.R.C.(MD) No.133 of 2019
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