



CrI.R.C.(MD)No.227 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

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S.Meenakshi Ammal

... Petitioner

vs.

K.Mohan

... Respondent

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure to call for the records pertaining to the Judgment and Orders dated 20.02.2019 passed by the learned Sessions Judge, Kanyakumari District at Nagercoil in C.A.No.27 of 2015 confirming the Judgment and Orders dated 19.05.2015 passed by the learned Judicial Magistrate (Fast Track Court) No.I, Nagercoil in C.C.No. 106 of 2012 and set aside the same.

For Petitioner

:Mr.N.Dilip Kumar

For Respondent

:Mr.V.M.Balamohan Thampi

ORDER

Challenging the Judgment and Orders dated 20.02.2019 passed by the learned Sessions Judge, Kanyakumari at Nagercoil in C.A.No.27 of



2015, the present Criminal Revision Case is filed by the petitioner / accused.

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

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

3.1. The accused borrowed a sum of Rs.2,00,000/- from the complainant on 24.08.2005 to meet out his family needs and to improve his business and handed over a post dated Cheque bearing No.373672 dated 04.02.2006 drawn on State Bank of Travancore, Nagercoil Branch to the complainant. When the complainant presented the said Cheque for collection through his banker viz., Canara Bank, K.P.Road Branch, the same was returned for the reasons 'insufficient funds' and 'proprietor not mentioned'. Thereafter, the complainant issued a legal notice dated 27.02.2006 to the accused demanding the latter to make good the payment. The accused after receiving the statutory notice sent a reply dated 13.03.2006, which according to the complainant contained false



allegations. The complainant after sending a rejoinder dated 18.03.2006, filed a private complaint under Section 200 of the Code of Criminal Procedure (hereinafter referred as 'Cr.P.C.') before the Judicial Magistrate (Fast Track Court) No.1, Nagercoil in C.C.No.106 of 2012 against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred as 'NI Act').

3.2. The learned Judicial Magistrate took cognizance of the offence under Section 138 of NI Act and issued summons to the accused under Section 204 of Cr.P.C. On the appearance of the accused, copies of the records were furnished to him under Section 207 of Cr.P.C. and when he was questioned with regard to substance of accusation, he denied the offence and hence, the case was posted for trial. The complainant examined himself and one another witness and marked Ex.P1 to Ex.P11. Thereafter, the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313 of Cr.P.C. and he denied of having committed any offence. However, the accused did not examine any witness on his side. The learned Judicial



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Magistrate after analysing the oral and documentary evidence adduced on both sides, held that the accused is guilty of the offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for a period of six months and to pay fine of Rs.2,00,000/-, in default to pay the fine amount, to undergo simple imprisonment for a period of one month. The entire fine amount of Rs.2,00,000/- was directed to be paid to the complainant. Aggrieved over the Judgment dated 19.05.2015 passed by the learned Judicial Magistrate (Fast Track Court) No.I, Nagercoil, the accused filed an appeal before the Sessions Court, Kanyakumari at Nagercoil in CrI.A.No.27 of 2015.

3.3. The learned Sessions Judge vide his Judgment dated 22.02.2019 confirmed the Judgment passed by the Trial Court and dismissed the appeal. Aggrieved over the same, the present Criminal Revision Case is filed.

4. Mr.N.Dilip Kumar, learned counsel appearing for the revision petitioner raised the following grounds.



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- (i) The Cheque was presented in torn condition.
- (ii) The name of the proprietorship concern was not indicated in the Cheque.
- (iii) There is a material alteration in the cheque.
- (iv) The seal of the JJ Fabricators has not been affixed on the Cheque.
- (v) Since the Cheque number and the other details are not mentioned in the statutory notice, the same is invalid.

5. *Per contra*, Mr.V.M.Balamohan Thampi, learned counsel appearing for the respondent contended that both the Courts below after analysing the oral and documentary evidence had concurrently held that the accused is guilty of the offence under Section 138 of NI Act and therefore interference by this Court is not warranted.

6. At the outset, it may be observed that the accused had admitted his signature on the Cheque. It was also admitted that the Cheque was signed by the accused in her individual capacity and not on



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behalf of JJ fabricators which is a proprietorship concern. In any event, it is settled law that proprietor and proprietorship concern are one and the same. A perusal of the records shows that there is no material alteration on the Cheque and both the Courts had given a concurrent factual finding in this regard also. Though there are two reasons mentioned in the Cheque Return Memo, it is to be pointed out that the Cheque was returned for the reason 'insufficient funds'. In this regard, the complainant had examined the Manager of the Bank as PW2, who had affirmed that the accused on the date of the Cheque did not have sufficient funds in his account. It is not the case of the accused that he had several transactions with the complainant and therefore the failure to indicate the Cheque number and other details in the statutory notice cannot be said to have prejudiced the accused. This aspect has also been dealt with in detail by both the Courts below.

7. When the accused had admitted his signature on the Cheque, there is a presumption under Section 118 of NI Act, that the Cheque is supported by consideration unless the contrary is proved. In the instant



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case, the accused had not adduced any acceptable evidence to show that he did not borrow money from the complainant. Another contention of the accused was that the Cheque was in torn condition. If the Cheque was in torn condition, the Bank would not have received the same. In fact, the Bank had accepted the Cheque when it was sent for collection and thereafter, it was returned dishonoured for the reason 'insufficient funds'. Both the Courts below had analysed all the aspects of the case and the accused also did not state anything to substantiate his contentions while he was questioned under Section 313 of Cr.P.C. In such circumstances, I do not find any reason to interfere with the concurrent findings rendered by both the Courts below.

8. Accordingly, the Criminal Revision Case is dismissed.

03.01.2024

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NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order



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WEB COURT
To
The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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