



CrI.R.C.(MD)No.261 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CrI.R.C.(MD)No.261 of 2019
and
CrI.M.P(MD) No.3852 of 2019

C.Ravikumar

... Petitioner

vs.

1.State Rep. by Public Prosecutor,
Nagercoil.

2.Vijayalakshmi

3.S.Ravikumar
(Power Agent represented on behalf of the
second respondent)

... Respondents

Prayer: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure to set aside the judgment passed by the learned Sessions Judge, Kanyakumari at Nagercoil in Criminal Appeal No.181 of 2005 dated 06.04.2018 confirming the judgment passed by the learned Judicial Magistrate, Kuzhithurai in C.C.No.27 of 2004, dated 13.06.2006.



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For Petitioner :Mr.D.Christenson Jugunu

For R1 :Mr.K.Sanjai Gandhi
Government Advocate (crl.side)

For R2 & R3 : Mr.B.Brijesh Kishore

ORDER

Challenging the conviction and sentence passed by the learned Sessions Judge, Kanyakumari at Nagercoil in C.A.No.181 of 2005, dated 06.04.2018, the present revision is filed by the accused.

2. The second and third respondents filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.I, Kuzhithurai, in C.C.No.27 of 2004 against the present revision petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (hereinafter referred as 'NI Act').

3. For the sake of convenience, the parties are referred as per their ranking in the trial Court.



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4. The second complainant is the power of attorney holder of the first complainant. The accused was residing as a tenant in a portion of the house belonging to the first complainant. On 07.06.2002, the accused borrowed a sum of Rs.1,10,000/- from the first complainant and in order to liquidate the same, issued a post dated cheque bearing No.371559 dated 06.06.2003 for Rs.1,10,000/- drawn on Canara Bank, Kuzhithurai Branch in favour of the complainant. When the cheque was presented for collection by the first complainant through his bankers, viz., State Bank of Travancore, Marthandam, the same was returned for the reason “insufficient funds” on 07.08.2003. Thereafter, the first complainant issued a statutory notice dated 22.08.2003 to the accused calling upon him to pay the amount due under cheque within fifteen days from the date of receipt of a copy of the letter. Though the accused received the said notice, he did not make good the amount. Therefore, a private complaint under Section 200 Cr.P.C. came to be filed against the accused for the offence under Section 138 of NI Act before the learned Judicial Magistrate No.I, Kuzhithurai. The learned Judicial Magistrate took cognizance of the offence under Section 138 of NI Act and issued



summons to the accused under Section 204 Cr.P.C. On appearance of the accused, copies of the records were furnished to him under Section 207 Cr.P.C. The substance of the accusation made in the private complaint was stated to the accused and he was questioned. Since the accused pleaded not guilty, the case was posted for trial.

5. The second complainant examined himself and one another witness and marked Ex.P1 to Ex.P7. The accused examined himself and two other witnesses and marked Ex.R1 to Ex.R3.

6. After analysing the oral and documentary evidence adduced on both sides, the learned Judicial Magistrate convicted the accused for the offence punishable under Section 138 of NI Act and sentenced him to undergo simple imprisonment for the period of one year and to pay a fine of Rs.4,000/-, in default, to undergo simple imprisonment for a period of one month. This conviction and sentence was passed by the learned Judicial Magistrate on 13.06.2005. Aggrieved over the conviction and sentence passed by the trial Court Judge, the accused filed an appeal in



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C.A.No.181 of 2005 before the learned Sessions Judge, Kanniyakumari at Nagercoil. The learned Sessions Judge, after analysing the oral and documentary evidence, confirmed the conviction and sentence passed by the trial Court vide his judgment and order dated 06.04.2018. Now, the present criminal revision is filed by the accused.

7. Mr.D.Christenson Jugunu, learned counsel appearing for the petitioner would contend that the present petitioner borrowed only a sum of Rs.60,000/- from the first complainant and had repaid the same in twelve instalments. His further contention is that on the basis of the complaint given by the first complainant, the present petitioner was summoned by the police, where he was coerced to issue a cheque for a sum of Rs.1,10,000/-. He therefore contended that the conviction and sentence passed by both the Courts below are perverse.

8. Per contra, Mr.K.Sanjai Gandhi, learned Government Advocate (crl.side) appearing for the first respondent and Mr.B.Brijesh Kishore, learned counsel for the respondents 2 and 3 would contend that



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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, no interference is warranted.

9. At the outset, it may be observed that the accused had not denied the signature on the cheque. Once the signature is admitted, there is a presumption under Section 118 of NI Act unless the contrary is proved. In the instant case, the specific contention of the accused is that he was coerced by the police to issue a cheque for a sum of Rs.1,10,000/- in the police station. In order to establish the same, he had examined himself and two other witnesses. However, in his reply notice dated 26.08.2003 (Ex.P7), the accused has categorically admitted that he had issued a cheque for Rs.1,10,000/- to the first complainant. He had also averred that he issued a blank cheque to the first complainant. Now, his contention is that he was coerced to issue a cheque for Rs.1,10,000/- by the police in favour of the first complainant.



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10. It is pertinent to point out that even in the subsequent notice of the accused dated 21.07.2003, there is no mention about the alleged coercion/threat made by the police for issuing a cheque in favour of the first complainant. In fact, all these aspects have been dealt with by both the Courts below. Both the Courts by well reasoned orders had convicted the accused for the offence punishable under Section 138 of NI Act and I therefore find no reason to interfere with the same.

11. As regards the sentence passed by the trial Court, I do not find that the same is on the higher side as the accused has been sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.4,000/-, in default, to undergo simple imprisonment for a period of one month.

12. In view of all these reasons, this Criminal Revision Case stands dismissed. The conviction and sentence passed by both the Courts below are hereby confirmed. The accused is directed to surrender before the learned Judicial Magistrate No.I, Kuzhithurai within a period of



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15 days from the date receipt of a copy of this order /uploading of the order whichever is earlier. If the accused does not appear, the learned Judicial Magistrate No.I, Kuzhithurai shall pass appropriate orders to secure the presence of the accused to serve the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

27.02.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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To

- 1.The Sessions Judge,
Kanyakumari at Nagercoil.
- 2.The Judicial Magistrate,
Kuzhithurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA, J.

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