



CrI.R.C.(MD)No.312 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CrI.R.C.(MD)No.312 of 2019
and
CrI.M.P(MD) No.4587 and 4588 of 2019

Sivaperumal

... Petitioner

vs.

Chinnadurai

... 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 passed by the learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District in C.A.No.110 of 2018 dated 20.03.2019 confirming the judgment passed by the learned Judicial Magistrate, Fast Track Court, Pattukottai in S.T.C.No.41 of 2017 dated 13.08.2018 and set aside the same.

For Petitioner

:Mr.P.Andiraj
for Mr.D.Anbarasu



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For Respondent :Mr.P.Thirumahilmaran

ORDER

The present petitioner/accused was convicted by the learned Judicial Magistrate, Fast Track Court, Pattukottai, in S.T.C.No.41 of 2017, for an offence punishable under Section 138 of Negotiable Instrument Act (hereinafter referred as 'NI Act') and sentenced him to undergo simple imprisonment for a period of one year and to pay a compensation of Rs.7,00,000/- to the respondent/complainant within one month under Section 357 (3) Cr.P.C., in default, to undergo simple imprisonment for a period of three months. This judgment was passed on 13.08.2018. In the appeal filed by the present petitioner in C.A.No.110 of 2018, the conviction and sentence passed by the trial Court was confirmed by the learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District, vide his judgment, dated 20.03.2019. Aggrieved over the same, the present Criminal Revision Case is filed.

2. The brief facts of the case of the respondent/complainant are as follows:-



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The petitioner borrowed a sum of Rs.7,00,000/- from the respondent/complainant on 10.09.2016 for his urgent family expenses and promised to repay the said amount. After much persuasion, the accused issued a cheque dated 10.10.2016 bearing No.063625 for Rs.7,00,000/- drawn on Axis bank, Eriyur Branch. When the respondent/complainant presented the cheque on 17.10.2016 for collection through his bankers, viz., Lakshmi Vilas Bank, Allathur Branch, the same was returned for the reason 'account closed'. Therefore, the respondent/complainant issued a statutory notice dated 19.11.2016 to the petitioner/accused and the same was received by the latter on 25.11.2016. The petitioner also sent a reply dated 26.11.2016, which, according to the respondent/complainant, contained false allegations. Therefore, the respondent filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate, Fast Track Court, Pattukottai, in S.T.C.No.41 of 2017 against the present petitioner for an offence punishable under Section 138 of NI Act. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On appearance of the accused, copies of the records were furnished to the



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accused under Section 207 Cr.P.C. and the substance of the accusation made in the complaint was put to the accused. Since the petitioner/accused pleaded not guilty, the case was posted for trial.

3. The respondent/complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P5. Circumstances appearing in evidence against the accused were put to him under Section 313 Cr.P.C. and the accused denied having committed any offence. However, he did not adduce any oral and documentary evidence on his side.

4. The learned Judicial Magistrate after analyzing the oral and documentary evidence held that the accused was guilty of the offence punishable under Section 138 of NI Act and sentenced him to undergo imprisonment for a period of one year and to pay a fine of Rs.7,00,000/-, in default, to undergo simple imprisonment for a period of three months. The appeal filed by the present petitioner was also dismissed and the conviction and sentence was confirmed by the appellate Court in C.A.No. 110 of 2018, dated 20.03.2019.



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5. Mr.P.Andiraj, learned counsel for the petitioner would contend that the petitioner had actually lost his cheque bearing No. 063625 and in this regard, he had lodged a complaint with the Inspector of Police, Ariyallur Police Station. This aspect was not at all considered by both the Courts below. He also drew the attention of this Court to the cross-examination of P.W.1, wherein he deposed that he does not know the residential address of the present petitioner and that he is also not aware of the business that was conducted by him. He therefore contended that in the light of the above deposition, it is highly improbable for any person to lend a huge sum of Rs.7,00,000/- to the present petitioner. His next contention is that the respondent/complainant had not also proved his means to lend a sum of Rs.7,00,000/- to the petitioner/accused. He therefore prayed for setting aside the conviction and sentence passed by both the Courts below

6. Per contra, Mr.P.Thirumahilmaran, learned counsel for the respondent/complainant would contend that both the Courts below after



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analyzing the evidence on record had convicted the accused for the offence under Section 138 of NI Act and he was also adequately sentenced. Therefore, no interference is warranted by the present court.

7. At the outset, it may be observed that the petitioner/accused did not deny the signature found on the cheque bearing No.063625. Once the signature is admitted, there is a presumption under Section 118 of NI Act until the contrary is proved that the cheque is supported by valid consideration. Though the present petitioner had contended that he lost the cheque near Ariyallur bus stop and has given a complaint to the Inspector of Police, Ariyallur Police Station, he has not adduced any documentary evidence to substantiate the same and he did not also examine the concerned police officials in this regard. Moreover, in his reply notice dated 26.11.2016, he has contended that he borrowed Rs.15,00,000/- from one Murugesan, resident of Karur and at the time of borrowal he handed over signed cheques to him. When he went to Karur to repay the amount, he was informed that the said Murugesan died and therefore, he came back without repaying the amount. According to him,



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one of the signed cheques handed over to Murugesan has been misused by the present respondent for the purpose of filing the complaint under Section 138 NI Act.

8. Thus, it is seen that two different stands were taken up by the present petitioner. He has not also initiated any action either against Murugesan or his legal heirs for handing over the cheque to the present complainant. In fact, all these aspects have been dealt with by both the Courts below and that accordingly, came to a conclusion that the present petitioner had not discharged his burden of proof by adducing acceptable evidence. Moreover, the respondent/complainant had proved his initial burden by adducing acceptable evidence and therefore, I do not see any reason to interfere with the concurrent findings of fact made by both the Courts below.

9. Accordingly, this Criminal Revision Case is dismissed and the conviction and sentence passed by both the Courts below are hereby confirmed. The accused is directed to surrender before the learned



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Judicial Magistrate, Fast Track Court, Pattukottai, within a period of 15 days from the date receipt of a copy of this order /uploading of the order whichever is earlier. If the accused is not appeared, the learned Judicial Magistrate, Fast Track Court, Pattukottai is directed to secure the presence of the accused to serve the remaining period of sentence. Consequently, connected miscellaneous petitions are closed.

29.02.2024

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

- 1.III Additional District and Sessions Judge,
Pattukottai, Thanjavur District.
- 2.The Judicial Magistrate, Fast Track Court,
Pattukottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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