



Crl.R.C.(MD).No.815 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On	:	20.12.2023
Pronounced On	:	19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.815 of 2023

and

Crl.M.P(MD). Nos.10984 and 10985 of 2023

Roch Vinister

... Petitioner/Accused

Vs.

The State of Tamil Nadu,
Rep. by the Inspector of Police,
District Crime Branch,
through Public Prosecutor,
Kanyakumari District,
Nagercoil.

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the order passed in C.A.No.5 of 2016 on the file of the learned Additional Sessions Court, Kanyakumari District dated 12.07.2023 by confirming the conviction sentence passed by the learned Judicial Magistrate No.1, Nagercoil, Kanyakumari District in C.C.No.205 of 2008 dated 31.12.2015 and set aside the same.

For Petitioner : Mr.J.Bebin Jose

For Respondent : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side)



Crl.R.C.(MD).No.815 of 2023

WEB COPY

ORDER

The petitioner is the accused in C.C.No.205 of 2008, on the file of the learned Judicial Magistrate No.I, Nagercoil. The learned Judicial Magistrate passed the conviction against him for the alleged offences punishable under Sections 408, 468, 471 of IPC. Aggrieved over the same, the petitioner herein filed an appeal before the Additional Sessions Court Kanyakumari, in Crl.A.No.5 of 2016 and the learned Additional Sessions Judge, Kanyakumari confirmed the conviction and sentence passed by the learned Judicial Magistrate No-I, Nagercoil.

2. The petitioner was working as Assistant in P.W.1's audit office. On 20.10.2006 P.W.1, entrusted the petitioner with a cheque of Rs.1,73,000/- bearing cheque No.735526 dated 20.10.2006, to be handed over to one Surendran/P.W.2 as a balance amount for his liability. In the said cheque, the signature of Surendran was forged and the said amount was misappropriated by the petitioner. Therefore, a complaint was lodged before the respondent police. Pursuant to the complaint given by the defacto-complainant, the respondent police registered a case for the alleged offence punishable under Sections 408, 468, 471 of IPC. After completion of the investigation, the respondent police



Crl.R.C.(MD).No.815 of 2023

filed a final report before the Judicial Magistrate No-I, Nagercoil. The same was taken on file in C.C.No.205 of 2008. The learned Magistrate issued a summons to the accused. After his appearance, the learned Magistrate served copies under Section 207 Cr.P.C. After that, the learned trial Judge framed the necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.

3.The prosecution to prove the case, examined the witnesses P.W.1 to P.W. 11 and exhibited Ex.P1 to Ex.P9 and on the side of defence D.W.1 was examined and Ex.D1 to Ex.D5 were exhibited. The learned trial judge after recording the above evidence, questioned the accused under Section 313 (1) Cr.P.C. The same was denied by the accused as false.

4.The learned trial Judge after considering the above evidence and documents, convicted the petitioner and imposed sentence of imprisonment as follows:



Crl.R.C.(MD).No.815 of 2023

Sl.No.	Conviction under Section	Sentence of imprisonment and fine
1	408 of IPC	To undergo two years of rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment
2	468 of IPC	To undergo two years of rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment
3	471 of IPC	To undergo two years of rigorous imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment

Challenging the same, he preferred the appeal before the Additional Sessions Court, Kanyakumari District, in Crl.A.No.5 of 2016 and the same was confirmed on 12.07.2023. Aggrieved over the same, the petitioner herein has filed this criminal revision case.

5. The learned counsel for the petitioner made the following submissions:

(i) The issuance of cheque mentioned in the insolvency petition is filed by the petitioner and hence, the cheque amount was issued only as a debt amount from P.W.1. Now, P.W.1 stated that the cheque was meant for P.W.2. In the said circumstances, the same was not properly considered by both the Courts below. Therefore, he seeks to interfere with the concurrent finding of both the Courts



Crl.R.C.(MD).No.815 of 2023

below.

WEB COPY

(ii) P.W.9/Manager was examined and he stated that as per the evidence, the amount was to be received either by P.W.6 or his representative hence, there was a concrete evidence and the petitioner alone is eligible to encash the same.

In the said circumstances, he seeks for acquittal.

6. The learned Additional Public Prosecutor, upon perusal of the records submitted that it is the specific case of the prosecution that the petitioner forged the signature of P.W.2 and encashed the amount. To prove the same, the admitted signature and the disputed signature, were compared with the petitioner's signature and the same tallied with the disputed signature. Hence, the offence of forgery is clearly made out. P.W.2 came into the box and stated that he has not received the cheque. Hence in the said circumstances, the trial Court considered all the aspects and convicted the petitioner and he prayed for the dismissal of this criminal revision case.

7. This Court has considered the rival submissions made on either side and perused the materials available on record and the precedents relied upon by them.



Crl.R.C.(MD).No.815 of 2023

WEB COPY

8.As rightly pointed out by the learned Additional Public Prosecution, The petitioner was the Assistant of P.W.1. He handed over the cheque in question to the petitioner with a direction to hand over the same to P.W.2 to discharge his liability. But the petitioner without handing over the cheque to P.W.2, presented the cheque in the account of P.W.2 by forging the signature of Surendran and encashed the same. The above fact was clearly spoken by P.W.1, P.W.2 and other witnesses. In this aspect all the evidence are cogent. According to the petitioner, he received the cheque amount only as debt from P.W.1. The said fact is not clearly proved.

9.From the perusal of the evidence of witness and documents and the defence evidence, this Court does not find any material to prove the defence. In the said circumstances, all the above aspects were considered by both the Courts below. Further, the hand writing expert also clearly deposed that the disputed signature is the signature of the petitioner. In the said circumstances, the prosecution clearly proved the offence of forgery of the signature of P.W.2 and encashment of the amount by producing the cheque issued to P.W.2. In the said circumstances, both the Courts below have clearly given the findings, and this



Crl.R.C.(MD).No.815 of 2023

Court does not find any perversity in the finding rendered by both the Courts below.

10.In the said circumstances, both the Courts below correctly appreciated the above facts and recorded conviction for the alleged offences punishable under Sections 408, 468 and 471 of IPC. Hence, this Court is not inclined to interfere with the concurrent finding and there was no perversity in the finding of both the Courts below.

11. Accordingly, this Criminal Revision Case stands dismissed and the order passed by the learned Judicial Magistrate No-I, Nagercoil, in C.C.No.205 of 2008 dated 31.12.2015 is hereby confirmed. Consequently, connected criminal miscellaneous petitions are closed.

19.03.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbh



Crl.R.C.(MD).No.815 of 2023

WEB COPY

1. The Learned Additional Sessions Judge,
Kanyakumari District.
2. The Judicial Magistrate No.1,
Nagercoil, Kanyakumari District.
3. The Inspector of Police,
District Crime Branch,
through Public Prosecutor,
Kanyakumari District, Nagercoil.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD).No.815 of 2023

K.K.RAMAKRISHNAN, J.

sbn

Pre-delivery Order made in
CrI.RC(MD). No.815 of 2023
and
CrI.M.P(MD). Nos.10984 and 10985 of 2023

19.03.2024