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Crl.R.C.(MD).No.735 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	02.08.2024
Pronounced on	:	25.10.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.K.RAMAKRISHNAN**

Crl.RC(MD)No.735 of 2024
and
Crl.M.P(MD).Nos.7769 and 7770 of 2024

S.P.R.Dhamodharan

... Petitioner

Vs.

R.Ramasamy
Represented through his power agent
Angusamy

... Respondent

PRAYER: This Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to call for the entire records pertaining to the judgment rendered by the I Additional District Sessions Judge, Thoothukudi in C.A.No.120 of 2017 vide judgment dated 29.08.2019 filed as against the acquittal judgment passed by the learned Fast Track Court,(Magisterial Level), Kovilpatti, Thoothukudi in C.C.No.36 of 2012 vide judgment dated 27.12.2012 and set aside the same and thereby acquit the petitioner from the charge levelled in the



Crl.R.C.(MD).No.735 of 2024

said case honorably.

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For Petitioner : Mr.R.Anand

For Respondent : Mr.R.Pon Karthikeyan

ORDER

The accused in C.C.No.36 of 2012 on the file of the learned Judicial Magistrate Fast Track Court, Kovilpatti, has filed this revision case, challenging the conviction and sentence imposed against him under Section 138 of NI Act, to undergo 6 months of simple imprisonment and directed to pay the cheque amount of Rs.5,00,000/- as a compensation, in Crl.A.No.120 of 2017 on the file of the I Additional District and Sessions Court, Thoothukudi.

2. The respondent/complainant has filed the complaint under Section 138 r/w142 of the NI Act, against the revision petitioner with the allegation that the petitioner borrowed a sum of Rs.5,00,000/- in the second week of July 2008 for the purpose of his business development with a promise to repay the said amount within a period of six months. Thereafter, he has not paid the amount and hence, the respondent insisted to make the repayment. Therefore, the petitioner issued a cheque dated 31.03.2009 for the value of Rs.5,00,000/- to discharge his debt.



Crl.R.C.(MD).No.735 of 2024

The same was dishonoured due to insufficient fund in the account of the petitioner. Therefore, he issued the legal notice on 26.09.2009 and the same was returned on 05.10.2009 and the petitioner disputed the issuance of cheque and his liability. Therefore, the respondent filed the complaint and the same was taken on file in C.C.No.36 of 2012. Summon was issued to the petitioner and on his appearance, copies were served in compliance with 207 of Cr.P.C., and charges were framed and he pleaded not guilty and he stood for trial.

3. To prove the case, the respondent examined himself as P.W.1 and marked Ex.P1 to Ex.P6. Thereafter, the petitioner was questioned under Section 313 Cr.P.C., by putting the incriminating materials available against him. The petitioner denied the same as false and on his side, he examined Inspector of Police as R.W.1 and filed the documents Ex.C1 and Ex.C2.

4. The learned trial Judge after considering the entire circumstances of the case and evidence, acquitted the petitioner. Aggrieved over the same, the respondent preferred the appeal in C.A.No.120 of 2017 before the I Additional District and Sessions Court, Thoothukudi, and the learned Appellant Judge was allowed the appeal and passed conviction and sentence of imprisonment of six



Crl.R.C.(MD).No.735 of 2024

months and directed to pay the compensation of Rs.5,00,000/- as stated above, through the impugned judgment dated 29.08.2019. Challenging the same, the petitioner has filed this criminal revision case before this Court.

5. The learned counsel for the petitioner submitted that the District Court has no jurisdiction to entertain the appeal against acquittal in view of the Hon'ble Full Bench Judgment reported in *(2020)4 CTC 1*. Therefore, the impugned judgment is liable to be set aside.

5.1.The learned counsel for the petitioner submitted that the learned appellant Judge has not followed the any of the parameters laid down by the Hon'ble Supreme Court which are to be followed in the case of the appeal against the acquittal.

5.2.The learned counsel for the petitioner submitted that the learned trial Judge has considered that police complaint laid prior to the alleged date of the issuance of the cheque with specific allegation that the respondent forcibly had taken the blank cheque from the petitioner. The said complaint was enquired by R.W.1/Inspector of Police and found that there was no issuance of cheque.



Crl.R.C.(MD).No.735 of 2024

Further, it is unbelievable to give loan of Rs.5,00,000/- without obtaining any document. It is also not stated in the income tax return of the respondent. The above facts were considered by the learned trial Judge and specifically has held that the issuance of cheque to discharge the legally enforceable debt is not established. The said finding of the learned trial Judge was not properly considered by the learned appellant Judge and only on the basis of the issuance of cheque and admission of the signature in the cheque, the learned Appellate Judge has convicted the petitioner. It is well settled principle that in the case of the appeal against acquittal, the first Appellate Court has no jurisdiction to interfere with the acquittal judgment when two views are possible on the evidence on record. In this case, on the basis of the evidence of R.W.1 and the other circumstances, there was a possible view that the amount was not received by the petitioner. Therefore, the learned first Appellate Judge has committed error in convicting the petitioner by reversing the well considered acquittal judgment of the learned trial Judge.

6.The learned counsel for the respondent submitted that the petitioner has not raised any jurisdictional issue before the learned Appellate Judge regarding the maintainability of the appeal against acquittal and the judgment of the



Crl.R.C.(MD).No.735 of 2024

Hon'ble Full Bench was delivered on 04.03.2020. Before that earlier Full Bench Judgment of this Court reported in **(2016) 4 CTC 119** was on field and hence, the learned first appellate judge has correctly entertained the appeal and there was no jurisdictional error.

6.1.The learned counsel for the respondent further submitted that it is the case of the petitioner that both the petitioner and the respondent are the close friends. Therefore, the amount was given to the petitioner herein on the ground of trust upon him without obtaining any document and the same cannot be taken against the complainant when the petitioner has not made any complaint with the allegation that the respondent forcibly taken the blank cheques from the petitioner. Apart from that the inspector of police specifically admitted that the original complaint filed under Section 156(3) of Cr.P.C., and forwarded by the learned Judicial Magistrate was not available. In the absence of the original complaint, no truthfulness is attached with the present complaint. Therefore, the evidence of inspector of police is to be rejected holding that he was not a trustworthy witness. Even in the complaint and during the course of the proceedings, the petitioner never disputed the cheque and the signature. Therefore, in all aspect, the legal presumption under Section 139 of NI Act,



Crl.R.C.(MD).No.735 of 2024

would arise and the petitioner has not dispelled the same in the manner known to law. Mere examination of the inspector of police, without production of the original complaint is not sufficient to dispel the legal presumption arise under Section 139 of NI Act. Once the signature in the cheque was admitted, the petitioner is duty bound to disprove the complainant's case and the cheque was not supported with the legal consideration. Mere non submission of the income tax return is not a ground to disbelieve the case of the complainant, when he specifically deposed that he gave the amount to the petitioner and the petitioner's cheque was in the custody of the respondent. Once, the original cheque was in the custody of the respondent, the presumption under Section 114(e) of the Indian Evidence Act, is available and the case of the petitioner that there was no relationship is not to be accepted. In all circumstances, the learned appellate Judge was correctly reversed the judgment of the learned trial Judge and convicted the petitioner.

7.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



Crl.R.C.(MD).No.735 of 2024

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8.The contention of the learned counsel for the appellant that the learned I Additional District and Sessions Judge, Thoothukudi, has no jurisdiction cannot be accepted. Earlier as per the Hon'ble Full Bench judgment of this Court reported in **2016 4 CTC 119 Ganapathy Vs. N. Senthilvel**, this Court both in administrative side and the judicial side directed every complainant to file the appeal before the District Court. Therefore, the appeal had been filed before the District Court and the judgment was delivered on 29.08.2019. The subsequent Hon'ble Full Bench judgment heavily relied by the petitioner was delivered on 04.03.2020. In the said judgment of the Hon'ble Full Bench in paragraph No.51 it is stated as follows:

51.Even though, we hold S.Ganapathi (Supra) as judgment per incuriam, the consequence of this judgment which has resulted orders being passed and which has become final/acted upon by the parties, can never be allowed to be re-opened.

In view of the above direction, this Court is unable to accept the argument of the learned counsel for the petitioner that the impugned judgment is invalid on the account of the lack of jurisdiction.



Crl.R.C.(MD).No.735 of 2024

WEB COPY

9. From the evidence on record, and the argument of the learned counsel for the petitioner, it is undisputed fact that both the petitioner and respondent are close friends and they are acquainted with each other for many years. According to the petitioner, he had not received any amount from the respondent and his specific case in the reply notice is that the respondent illegally trespassed into the petitioner's house and committed theft of the blank cheque. The respondent is a money lender and he has the habit of receiving the exorbitant interest and he is not only politically influential person and also muscle men to run his business of money lending. The respondent without any liability has taken the cheques from the petitioner under threat and coercion. But, the cross examination of the petitioner is otherwise. R.W.1/Inspector of the Police was examined. He produced the records Ex.C1 and Ex.C2. In his chief examination itself he stated that he did not know whose signature was found in the complaint marked. The author of Ex.C1 and Ex.C2 was not examined. From Ex.C1 and Ex.C2 it is clear that there was some other allegation that has taken place between Sankaran and Kannan and other person. The said complaint was said to have been given by the respondent. Further, the said complaint was not original and the specific evidence is the original was not available. Further evidence is that R.W.1 has no knowledge subordinate officer who signed the document under Ex.C1.



Crl.R.C.(MD).No.735 of 2024

Therefore, the entire discussion on the basis of the above said document by the learned trial Judge is erroneous one. It is the specific case of the petitioner that he made a petition under section 156(3) of Cr.P.C., and the same was forwarded. But, according to R.W.1, the same was not available in the station and marked Ex.C2 is not the original and the same was not found with the seal of Court. Therefore, the said document is inadmissible and the same is not correctly relied by the learned Appellate Judge.

10. The finding of the learned trial Judge that the case of the respondent is unbelievable as no document was obtained for handing over the money of Rs.5,00,000/-, cannot be accepted for the reason that both the petitioner and the respondent are close friends and the amount was handed over on trust upon friendship. The said fact was properly analysed by the learned Appellate Judge and decided against the petitioner.

11. The non-submission of the income tax return for the amount on the side of the respondent is not sufficient to dispel the presumption arose under Section 139 of the NI Act. It is the case of the petitioner that the cheque was illegally taken from the custody of the petitioner in forcible manner but he has



Crl.R.C.(MD).No.735 of 2024

not made any complaint and also not taken any steps to inform the bank officials for stopping payment citing the said reason. The said facts were properly considered by the learned appellate Judge.

12. In view of the above discussion and in the absence of any evidence that the respondent forcibly taken the cheque from the custody of the petitioner, the admission of the signature in the cheque clearly proves that the cheque was issued for the discharge of the debt amount mentioned therein. There was no legally valid contra evidence adduced on the side of the petitioner to dispel the presumption and also no material circumstances were elicited during the course of the cross examination of the respondent and hence, there was no circumstances to dispel the presumption under Section 139 of NI Act, and therefore, the learned Appellant Judge has correctly reversed the acquittal judgment passed by the learned trial Judge and passed the conviction and this Court finds no perversity in the finding of the learned appellate judge in reversing the acquittal judgment. Therefore, this Court finds no merits in the revision.



Crl.R.C.(MD).No.735 of 2024

WEB COPY

13. Accordingly, the Criminal Revision Case stands dismissed and the judgment passed by the learned I Additional District and Sessions Judge, Thoothukudi in C.A.No.120 of 2017 dated 29.08.2019 is hereby confirmed. Consequently, connected miscellaneous petitions are closed.

25.10.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The I Additional District Sessions Judge,
Thoothukudi.
2. The Fast Track Court,(Magisterial Level),
Kovilpatti, Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.



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Crl.R.C.(MD).No.735 of 2024

K.K.RAMAKRISHNAN, J.

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Crl.R.C.(MD)No.735 of 2024
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Crl.M.P(MD).Nos.7769 and 7770 of 2024

25.10.2024