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CrI.R.C.No.248 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.248 of 2023

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M.Akber Ali, S/o Mohamed Sharif

.. Petitioner

Vs.

K.Suresh, S/o Kondasamy

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure against the judgment of conviction and sentence imposed on 10.09.2020 made in CrI.A.No.73 of 2019 on the file of the Principal District and Sessions Judge, Namakkal, confirming the judgment of conviction and sentence passed on 06.11.2019 in S.T.C.No.206 of 2017 on the file of the Judicial Magistrate (FTC), Tiruchengode.

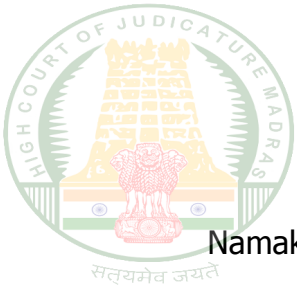
For petitioner : M/s.R.Parthiban

For respondent: No appearance

ORDER

This revision petition arises out of the dismissal of the Criminal Appeal in CrI.A.No.73 of 2019 on the file of the Principal District and Sessions Court,

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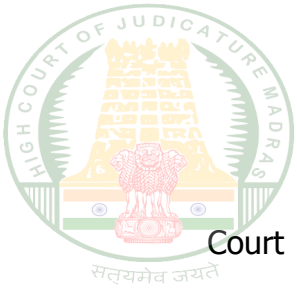
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Namakkal by judgment dated 10.09.2020, confirming the judgment of conviction and sentence passed on 06.11.2019 in S.T.C.No.206 of 2017 on the file of the Judicial Magistrate (FTC), Tiruchengode.

2. Despite giving an opportunity of hearing, the learned counsel for the revision petitioner/accused reports "no instructions". This Court perused the records and the order is being passed.

3. On a perusal of the records, it is seen that the respondent has filed a complaint under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate (FTC) at Thiruchengode. The learned Magistrate has taken the complaint on file in S.T.C.No.206 of 2017 and after trial, the revision petitioner/accused was found guilty of the said offence and convicted and sentenced him to undergo six months simple imprisonment and also directed him to pay Rs.7 lakhs as compensation to the respondent/complainant and in default of payment of compensation, he shall undergo simple imprisonment for one month. Aggrieved by the said judgment of conviction and sentence imposed on him by the trial Court, the revision petitioner/accused has filed Criminal Appeal in Crl.A.No.73 of 2019, in which the judgment of conviction and sentence imposed by the trial

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Court along with payment of Rs.7 lakhs as compensation, the revision petitioner/accused has filed the present revision petition before this Court.

4. On a further perusal of the records, it is to be noted that the respondent/complainant had given Rs.7 lakhs as borrowal to the revision petitioner/accused. To discharge the said borrowal by way of loan, the accused issued a cheque, bearing No.070170, dated 17.02.2017, and when the same was presented for collection in the Bank, it was returned with Memo, dated 01.03.2017. As the cheque was not honoured for payment, it was returned with endorsement as "insufficient funds". The respondent/complainant issued statutory notice on the said date, i.e. on 01.03.2017, which was also acknowledged by the accused on 03.03.2017. On receipt of the statutory notice, the revision petitioner/accused neither paid the borrowed amount mentioned in the cheque, nor sent any reply. Therefore, the respondent/complainant was constrained to file a private complaint against the revision petitioner/accused before the trial Court for the offence under Section 138 of the Negotiable Instruments Act.

5. In order to substantiate the complaint filed by the respondent, the complainant was examined as P.W.1 and four document in Exs.P-1 to P.4 were

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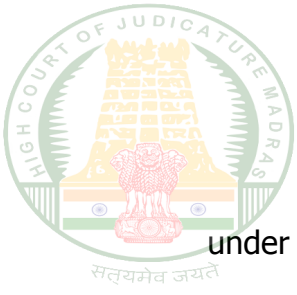
marked. On the side of accused, he was examined as D.W.1 and Exs.D-1 to D-4 were marked.

6. On a reading of the evidence of P.W.1, it is reiterated that the allegations made in the complaint relate to the borrowal of money and in order to prove the same, the disputed cheque was marked as Ex.P-1. The Return memo dated 01.03.2017 was marked as Ex.P-2. Subsequently, the statutory notice was issued on 01.03.2017 and a copy of the same was marked as Ex.P-3 and the postal acknowledgement card dated 03.03.2017 was marked as Ex.P.4.

7. Therefore, the respondent/complainant has substantiated the averment made in the complaint that the revision petitioner/accused borrowed Rs.7 lakhs and in order to substantiate the same, the accused had issued the cheque, and the same was presented for collection, it was returned with endorsement "insufficient funds".

8. The revision petitioner/accused, on receipt of the notice, neither sent reply, nor paid the borrowed amount. On a reading of the cross-examination of P.W.1 by the revision petitioner, the accused had not denied the signature or execution of the cheque. Therefore, the trial Court had drawn a presumption

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under Section 139 of the Negotiable Instruments Act that when once the execution of the cheque is admitted, there is a statutory presumption that the cheque was drawn for discharging the legally recoverable debt/liability. In case the revision petitioner is denying or disputing the same, the revision petitioner has to rebut the presumption in the manner known to law. On further perusing the materials available on record, this Court does not find that the revision petitioner has rebutted the said presumption in the manner known to law. Therefore, though the revision petitioner was examined as D.W.1, however, nothing has been brought on record to show that the petitioner has not executed the cheque and that in this case, there is legally dischargeable debt. However, the revision petitioner/accused stated that he sent reply for the statutory notice, but the respondent/complainant has not marked the said reply as a document. The revision petitioner has marked the reply notice, dated 09.03.2017 as Ex.D-1. The petitioner has not proved that the reply was duly served on the respondent. The same was addressed to the wrong address and further, it is clear that the revision petitioner has not denied the execution of the cheque. He has also not repaid the amount.

9. Therefore, when once the revision petitioner has not denied the signature found in the cheque or even the execution of the cheque, it is the

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bounden duty of the revision petitioner/accused to establish that if at all the cheque was issued not for discharging the legally enforceable debt.

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10. Both the Courts below, considering the materials available on record, as produced by both parties and also taking into account the defence taken by the accused, found that the respondent/complainant has proved his case and thereby, the revision petitioner/accused was convicted and sentenced as stated supra. On a perusal of the records, it further revealed that the trial Court has convicted and sentenced him, which the appellate Court also confirmed, against which, now the revision petitioner is before this Court.

11. It is settled proposition of law that the scope of the revision petitioner is limited and the Revisional Court cannot sit in the arm-chair of the appellate Court and re-visit or re-appreciate the evidence and the Revisional Court has to see as to whether there is any perversity or illegality or infirmity in appreciation of the evidence by the Courts below and whether there is any violation of the statutory provisions.

12. On a further browsing of the materials available on record, this Court finds that there is no perversity or illegality or infirmity in appreciation of

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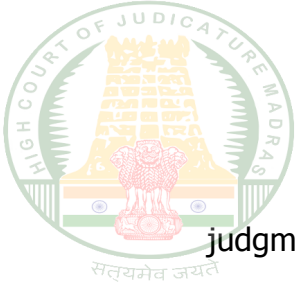
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evidence by the Courts below and there is not even any violation of the statutory provisions of law. When once the complainant has established the issuance of the cheque and its return by the Bank leading to dishonour of the cheque and statutory notice was also issued and it is clear that the offence under Section 138 of the Negotiable Instruments Act is made out. The revision petitioner/accused has to comply with the statutory notice sent by the respondent/complainant and neither reply was given, nor the amount was paid back to him. However, the revision petitioner has stated that he has sent reply, but the revision petitioner has not proved that the reply notice was received by the respondent/complainant. However, Exs.D-3 and D.4 show that the reply notice sent by the complainant returned with postal cover, and it shows that the notice was not received by the respondent/complainant. However, when once the signature in the cheque and the execution of the cheque are admitted, it is the foremost duty of the petitioner/accused to rebut the presumption in the manner known to law.

13. In the case on hand, on a reading of the evidence adduced by the parties and the exhibits including the notice marked, and on a detailed perusal of the judgments of conviction and sentence imposed by both the Courts below, this Court does not find any compelling reason to interfere with the impugned

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judgments of conviction and sentence passed by the Courts below.

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14. Accordingly, the revision petition is dismissed. The judgments of conviction and sentence passed by both the Courts below, are confirmed. The revision petitioner/accused is directed to settle the cheque amount in favour of the respondent/complainant, forthwith. If the revision petitioner/accused fails to pay the cheque amount to the respondent/complainant, the trial Court is directed to take steps to secure the custody of the revision petitioner/accused and commit him to prison for undergoing the imprisonment as ordered by the trial Court.

02.04.2025

CS

To

1. The Principal District and Sessions Judge, Namakkal.
2. The Judicial Magistrate (FTC), Tiruchengode.
3. The Section Officer, Criminal Section - Records Wing, High Court, Madras.

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P.VELMURUGAN, J

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