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CrI.R.C.No.281 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.281 of 2021

V. Balasubramaniam

.. Petitioner

Versus

G. Srinivasan

.. Respondent

Criminal Revision case is filed under Section 397 and 401 of Cr.P.C to set aside the conviction imposed in judgment dated 18.02.2021 made in C.A. No. 74 of 2020 on the file of the learned IV Additional District and Sessions Judge, Erode District at Bhavani confirming the conviction imposed in the judgment dated 11.03.2020 made in S.T.C. No. 5875 of 2015 on the file of the learned Judicial Magistrate-I, Bhavani.

For Petitioner	:	Mr. M. Guruprasad
For Respondent	:	Mr. R. Ganesh

ORDER

This Criminal Revision Case is filed to set aside the conviction imposed in the judgment dated 18.02.2021 made in C.A. No. 74 of 2020 on the file of the learned IV Additional District and Sessions Judge, Erode District at Bhavani confirming the conviction imposed in the judgment dated 11.03.2020



made in S.T.C.No.5875 of 2015 on the file of the learned Judicial Magistrate-I,
Bhavani.

2. The brief facts, which are necessary for the disposal of this Criminal Revision Case, are as follows:-

2.1. The Complainant/Respondent herein has filed S.T.C. No. 5875 of 2015 before the learned Judicial Magistrate No.I, Bhavani complaining that the Accused/Revision Petitioner approached him for financial assistance during April 2013 and he had lent a sum of Rs.14,00,000/-. According to the Complainant, the Accused agreed to repay the said amount with interest at the rate of 18% per annum. It was also agreed that the Accused shall pay Rs.2,00,000/- each on 13.04.2013, 09.05.2013, 17.05.2013, 19.07.2013. Rs.4,00,000/- on 05.06.2013, Rs.1,25,000/- on 07.11.2013 and Rs.75,000/- on 13.07.2013. In order to discharge the said liability, the Accused also entrusted 7 post-dated cheques in favour of the Complainant on 19.07.2013. All the above said cheques have been drawn on Indian Overseas Bank, Erode Branch. When the Complainant presented the cheques for collection through his Bankers Karur Vysya Bank, Bhavani Branch on 29.08.2013, all the cheques have been dishonoured with an endorsement 'funds insufficient'. The Complainant therefore issued a legal notice on 10.09.2013 and on receipt of



the same, the Accused had issued a reply notice dated 07.10.2013 denying the averments in the notice dated 10.09.2013. Thereafter, the Complainant had filed the complaint under Section 138 of The Negotiable Instruments Act, for dishonour of the cheques.

2.2. During trial in the Criminal Case, the Complainant examined himself as P.W-1 and marked 12 documents as Ex.P-1 to P-12. On the side of the Accused, he examined himself as D.W-1, but no document was marked. The trial Court, on appreciation of the oral and documentary evidence concluded that the Accused admitted the receipt of the cheques in the Insolvency Petition filed before the Sub Court, Erode. The trial Court also concluded that the Complainant had proved that the cheques had been issued by the Accused for a legally enforceable debt and liability. Based on such conclusion, the trial Court held the Accused guilty of the offence punishable under Section 138 of The Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year. The trial Court also directed the Accused to pay the cheque amount of Rs.14,00,000/- (Rupees Fourteen Lakhs only) as compensation within a period of one month, failing which, to undergo simple imprisonment for a period of two months.

2.3. Aggrieved by the judgment dated 11.03.2020 of the Trial Court, the Revision Petitioner-Accused had filed a Criminal Appeal No. 74 of 2020



before the learned IV Additional District and Sessions Judge, Erode and the Appeal was also dismissed on 18.02.2021. Aggrieved by the same, the present Criminal Revision Case had been filed.

3. The learned Counsel for the Revision Petitioner submitted that the Complainant filed the complaint under Section 138 of the Negotiable Instruments Act, alleging dishonour of cheques issued by the Accused for Rs.14,00,000/- (Rupees Fourteen Lakhs only) covered under 7 cheques. During the course of the trial, the Complainant marked Ex.P-12, Insolvency Petition No. 17 of 2014 filed by the Accused to declare him insolvent, in which the details of liability was shown in a tabular column in which S.No. 32 refers to the Complaint filed for dishonour of cheques worth Rs.14,00,000/- (Rupees Fourteen Lakhs only). The defense of the Accused is that the Complainant is a stranger and he had not seen him before. It was also stated that the business of the Accused have been managed by one Yuvaraj and he has no connection, whatsoever, with the Complainant. However, such a defence was not considered by the learned Judicial Magistrate-I, Bhavani and convicted the Accused by judgement dated 11.03.2020 in S.T.C.No.5875 of 2015.

4. The learned Counsel for the Revision Petitioner submitted that the



Respondent had neither proved his capacity to pay such a huge amount.

Further, it is strange that the Respondent had paid such a huge amount without receipt of any document as security except the disputed cheques. As per Section 269 SS of The Income Tax Act, the amount of Rs.20,000/- and above has to be paid only by way of a cheque or demand draft. In this case, there is nothing to show the manner in which the alleged loan amount of Rs.14,00,000/- was paid on a single day. Further, the Complainant had not produced any Bank account to prove that Rs.14,00,000/- was paid to the Accused. It is further submitted by the learned Counsel for the Revision Petitioner-Accused that the family of the Accused had moved Insolvency Petition before the learned Sub Judge, Erode in I.P. No. 17 of 2014. The Complainant/Respondent herein is shown as Respondent-32 in the Insolvency Petition. Therefore, this private complaint is not maintainable. However, the Courts below had erroneously convicted the Revision Petitioner for the alleged offence under Section 138 of The Negotiable Instruments Act. Accordingly, the learned Counsel for the Petitioner prayed for allowing this Criminal Revision Case.

5. Per contra, the learned Counsel for the Respondent submitted that defense of the Accused that he had not signed the cheques was rejected by the



learned Judicial Magistrate-I, Bhavani while convicting him. The defense of the Accused that during the relevant period, the shop of the Accused Balu Powerloom factory was run by the nephew of the Accused by name Yuvaraj was also not believed by the trial Court on the ground that the said Yuvaraj was not examined. It is the contention of the learned Counsel for the Respondent that the Criminal Revision case is not maintainable as the Revisional Court cannot sit as an Appellate Court to re-assess the evidence unless there is any illegality in the findings recorded by the learned Judicial Magistrate or the learned Appellate Judge. Such a revisional power has been conferred to the High Court only to prevent miscarriage of justice. In the present case, this Court need not exercise the revisional power and it is a fit case to be dismissed. The learned Counsel for the Respondent, therefore, submits that the Criminal Revision Case lacks merits and it is liable to be dismissed.

Point for consideration:

Whether this Revision is to be allowed and the judgment of conviction recorded by the learned Judicial Magistrate-I Bhavani in S.T.C.No.5875 of 2015 dated 11.03.2020 and the dismissal of the Criminal Appeal preferred by the Accused in Criminal Appeal No.74 of 2020 dated 18.02.2021 by the learned

Additional District and Sessions Judge, Bhavani thereby



***confirming the judgment of conviction recorded by the learned
Judicial Magistrate-I, Bhavani are to be set aside as perverse?***

6. Heard Mr. M. Guruprasad, learned Counsel for the Revision Petitioner and Mr. R. Ganesh, learned Counsel for the Respondent. Perused the records and the judgment dated 18.02.2021 made in C.A. No. 74 of 2020 on the file of the learned IV Additional District and Sessions Judge, Erode District at Bhavani and also the judgment dated 11.03.2020 made in S.T.C. No. 5875 of 2015 on the file of the learned Judicial Magistrate-I, Bhavani.

7. On perusal of the judgments, it is found that the learned Judicial Magistrate-I had on proper appreciation of documentary evidence through Ex.P-1 to Ex.P-12 and the oral evidence of Complainant as P.W-1 and the Accused as D.W-1 had rejected the defence of the Accused that the Accused had not issued the cheques under Ex.P-1. The defence of the Accused that the signature of the Accused in the cheques under Ex.P-1 to Ex.P-7 are not that of the Accused was also rejected on the ground that in the reply notice under Ex.P-11, the Accused had not denied it. Also, the cheque under Ex.P-1 to Ex.P-7 were returned with endorsement from the Bank where the Accused maintained his Account with endorsement 'insufficient funds' and not with endorsement 'signature differs'. Also, in the preliminary questioning, when the

Accused was granted copies under Section 204 (3) of Cr.P.C, the Accused



denied the charge under 138 of Negotiable Instruments Act. At that time also, he had not denied the signature under Ex.P-1 to Ex.P-7. The defense of the Accused at that stage was the Complainant is a stranger and there is no legally enforceable debt or liability towards the cheques issued by the Accused.

8. The Accused claimed that the Complainant is a stranger. At the stage of 313 questioning, the Accused denied the signatures. Accused also stated that he had preferred Insolvency Petition in I.P. No. 17 of 2014 against the creditors. On assessment of evidence, the learned Judicial Magistrate rejected the claim of the Accused that he had preferred I.P.No.17 of 2014 on the ground that he had not obtained any order declaring him as insolvent. The claim of the Accused that the Complainant was a stranger was also rejected on the ground that Accused himself had filed Insolvency Petition along with his brother and brother's wife in which he had given the details of the liability towards Complainant/Respondent herein by arraying as Respondent No.32 in I.P. No. 17 of 2014. Therefore, the defence that the Complainant is a stranger is too big a pill to be swallowed by the Accused. On the one hand, the Accused claims that the Complainant is a stranger. On the other hand, I.P. No. 17 of 2014 was filed by his family members arraying the Complainant as Respondent No.32. Therefore, the Accused approbates and reprobates in his



stand which cannot be permitted.

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9. On perusal of the records, it is found that the Complainant had filed Ex.P-12, copy of the Insolvency Petition No.17 of 2014 filed by the Accused. The learned Judicial Magistrate on considering the same discussed it in paragraph 21 of the judgment wherein it was observed that even though, the Accused claimed that the Complainant is a stranger and he had not issued the cheques under Ex.P-1 to Ex.P-7, such a defence was disproved by reason of Ex.P-12, Copy of the Insolvency Petition in which the Complainant was shown as Respondent No.32. Further, when the Accused was examined under 313 Cr.P.C, he claimed that he had not issued the cheques and signature in the cheques are not his signature. It was observed by the learned Judicial Magistrate, Bhavani that the cheques under Ex.P-1 to Ex.P-7 were not returned by the Bank where the Accused maintains his accounts on the ground that “signature differs”, but due to “insufficient funds”. Therefore, the presumption available to the Complainant under Section 139 of the Negotiable Instruments Act gets stronger and it was not successfully rebutted by the Accused. The learned IV Additional District and Sessions Judge had also discussed the same in paragraph 11 of the judgment and rejected the argument of the learned Counsel for the Appellant in Criminal Appeal No.74 of 2020. When there is no



perversity or illegality either by the learned trial Judge or by the learned Appellate Judge, this Court cannot interfere exercising the powers under Sections 397 and 401 Cr.P.C. In the light of the above discussion, this revision is without any merit. As pointed out by the learned Judicial Magistrate-I, Bhavani, the case was pending before the learned Judicial Magistrate-I from the year 2013. For 7 years, it was pending only due to the conduct of the Accused.

10. The Accused examined himself as D.W-1 to disprove the claim of the Complainant as a rebuttal evidence under Section 139 of the Negotiable Instruments Act. However, his defence evidence was rejected by the Courts below. Merely the Accused examined himself as D.W-1 it cannot be considered as a rebuttal evidence unless such examination ably disprove the claim of the Complainant. The claim of the Accused that his nephew Yuvaraj was in-charge of the day-to-day affairs of the Mill in the name of Accused and therefore he could not have issued cheques was also rejected on the ground he had not examined the said Yuvaraj as witness or marked any register maintained by him at the relevant point of time. Therefore, the strong presumption available to the Complainant under section 139 of Negotiable Instruments Act is found to have not been rebutted by the Accused by



examining himself as D.W-1. The burden is not shifted to the Complainant by examination of the Accused as D.W-1. The Accused failed to discharge the burden cast upon him under Section 139. The discussion of the evidence by the learned Judicial Magistrate-I in paragraph 14 to 24 and the conclusion reached by the learned Judicial Magistrate-I that the Accused had committed the offence under 138 of the Negotiable Instruments Act does not warrant any interference by this Court. The learned IV Additional District and Sessions Judge also considered the grounds of appeal in which he had attacked the reasoning of the learned Judicial Magistrate-I Bhavani. The learned IV Additional District and Sessions Judge, Erode at Bhavani on independent assessment of evidence arrived at a conclusion that the defence of the Accused had not been established by preponderance of probabilities of the case. Thus it was held that the Accused failed in his attempt to discharge the burden cast upon him as per Section 139 of the Negotiable Instruments Act. Therefore, the presumption available to the Complainant remain un rebutted. This Court, therefore, does not find any reason to interfere with the orders of the Courts below. This Court on assessment of evidence, had arrived at the same conclusion reached by the learned trial Judge as well as the learned Appellate Judge. When there is concurrent finding, this Court is not expected to unsettle the findings of the trial Court confirmed by the Appellate Court unless they are



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perverse or contrary. Therefore, the conviction recorded by the learned Judicial Magistrate-I, Bhavani in S.T.C.No.5875 of 2015 dated 11.03.2020 and confirmed by the learned IV Additional District and Sessions Judge, Erode at Bhavani in C.A.No.74 of 2020 dated 18.02.2021 are to be confirmed.

11. In the light of the above discussion, the point for consideration is answered against the Revision Petitioner and in favour of the Respondent/Complainant. The judgment of conviction recorded by the learned Judicial Magistrate-I Bhavani in S.T.C.No.5875 of 2015, dated 11.03.2020 which was confirmed by the judgment in Criminal Appeal No.74 of 2020 dated 18.02.2021 by the learned IV Additional District and Sessions Judge, Bhavani, is found to be well reasoned judgment and not perverse warranting interference by this Court.

In the result, **this Criminal Revision is dismissed as having no merits.** The judgment of conviction recorded by the learned Judicial Magistrate-I Bhavani in S.T.C.No.5875 of 2015, dated 11.03.2020 which was confirmed in the judgment in Criminal Appeal No.74 of 2020 dated 18.02.2021 by the learned IV Additional District and Sessions Judge, Bhavani, is confirmed.



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The learned Judicial Magistrate-I, Bhavani is directed to issue warrant against the Accused in S.T.C.No.5875 of 2015, to secure the Accused through the jurisdictional Police to undergo the remaining period of sentence and record compliance to the High Court.

18.03.2025

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order

To

1. The IV Additional District and Sessions Judge
Erode District at Bhavani
2. The Judicial Magistrate-I
Bhavani.
3. The Section Officer,
Criminal Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J

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Order made in
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18.03.2025