



Criminal Revision Case No.378 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.04.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.378 of 2021

K. Ekambaram

.. Petitioner

Versus

Dr. Premkumar

.. Respondent

Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the judgment dated 20.12.2019 made in Criminal Appeal No. 81 of 2018 on the file of the learned II Additional District Sessions Judge, Thiruvallur at Poonamallee confirming the judgment dated 22.11.2017 made in S.T.C. No. 73 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee.

For Petitioner	:	Mr. J. Deliban
For Respondent	:	Mr. B. Sundarapandiyan

ORDER



This Criminal Revision Petition is filed to set aside the judgment dated 20.12.2019 passed in Criminal Appeal No.81 of 2018 on the file of the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee confirming the judgment dated 22.11.2017 made in S.T.C.No.73 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee.

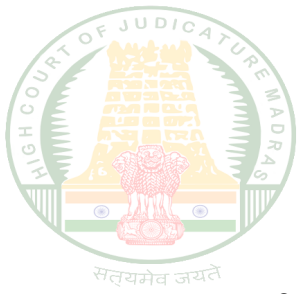
2. The brief facts, which are necessary for the disposal of this Criminal Revision, are as follows:-

2.1. The Complainant in STC No. 73 of 2016 before the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee is a practicing Doctor. The Accused therein acquainted with the Doctor as a patient. In the course of such interaction, the Doctor came to know that the Accused is a real estate dealer. Therefore, he expressed his intention to purchase a house site. In this context, the Complainant and the Accused entered into an agreement of sale dated 25.11.2014 for purchase of an immovable property owned by the Accused and his wife. On execution of such agreement, the Complainant paid Rs.50,00,000/- out of Rs.60,00,000/-. After execution of the agreement of sale, the Complainant came to know that the land owned by the Accused and his wife is classified as Government



Poromboke land. Therefore, the Complainant called upon the Accused to refund the advance amount paid by him. After repeated demand, the Accused issued two cheques bearing Cheque Nos. 00029 and 00031 dated 19.10.2015 and 29.10.2015 drawn on HDFC Bank, Mylapore, Chennai for a sum of Rs.5,00,000/- each totalling Rs.10,00,000/-. When the Complainant presented the cheques with his banker M/s. IDBI Bank Limited, CTH Road, Avadi, on 22.10.2015 and 30.10.2015, they were returned with an endorsement “insufficient funds” in the account. The Complainant therefore issued a notice dated 23.11.2015 to the Accused for which a reply dated 29.12.2015 was issued by the Accused. Thereafter the Complainant had filed the complaint in S.T.C. No. 73 of 2016 before the learned Judicial Magistrate, Poonamallee.

2.2. The learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), after recording the sworn statement of the Complainant and perusing the documents furnished by him along with the Complaint had taken cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 and taken the Complaint on file as STC.No.73 of 2016. The learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee had issued summons to the Accused along with a copy of the Complaint under Section 207 of Cr.P.C.,



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2.3. On appearance of the Accused, he was questioned regarding the Charge under 138 of the Negotiable Instruments Act, 1881 but the Accused denied the charge and claimed to be tried. Therefore, trial was ordered. During trial, the Complainant examined himself as P.W-1 and marked six documents as Ex.P-1 to Ex.P-6. Ex.P-1 is the sale agreement entered into with the Accused and his wife. Ex.P-2 series are the cheques bearing Nos.000031 and 000029. Ex.P-3 series are return memos with references to the said cheques. Ex.P-4 is the legal notice with postal receipt dated 24.11.2015. Ex.P-5 is the postal acknowledgment card and Ex.P-6 is the reply notice. Other than the Complainant, no other witnesses were examined on behalf of the Complainant. From the incriminating evidence available before the Court, the Accused was examined under Section 313 Cr.P.C., The Accused denied the incriminating evidence against himself.

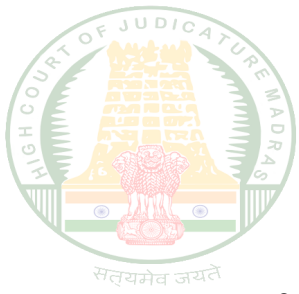
2.4. After hearing the argument of the learned Counsel for the Complainant and the learned Counsel for the Accused and on appreciation of evidence on record, the learned Judicial Magistrate, Fast Track Court-II by Judgment dated 21.11.2017 in STC.No.73 of 2016 convicted the Accused for the offence under Section 138 of the Negotiable Instruments Act, 1881 and



sentenced him to undergo Simple Imprisonment for 12 months and to pay compensation of Rs.10,00,000/-, in default, to undergo three months Simple Imprisonment.

2.5. Aggrieved by the Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Poonamallee in STC.No.73 of 2016, dated 21.11.2017, the Accused preferred an Appeal before the learned Principal Sessions Judge, Tiruvallur. The Appeal was numbered as Criminal Appeal No. 81 of 2018 and it was transmitted to the file of the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee. After hearing the arguments of the learned Counsel for the Appellant/Accused and the learned Counsel for the Respondent/Complainant, the learned Second Additional District and Sessions Judge, Thiruvallur at Poonamallee, by Judgment dated 20.12.2019, dismissed the Criminal Appeal and confirmed the Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee.

2.6. Aggrieved by the dismissal of the Appeal, the Accused/Appellant before the learned Second Additional District and Sessions Judge, Thiruvallur at Poonamallee had preferred this Criminal Revision.



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3. The learned Counsel for the Revision Petitioner submitted that the learned Judicial Magistrate failed to consider the materials available in the cross-examination to the effect that there is a dispute between the Complainant and the Accused regarding purchase of property. The Complainant was unable to state clearly in his deposition the date of handing over the money to the Accused and record to that effect had not been written by him. As per the statutory notice, he claimed Rs.50,00,000/- but he had preferred a Complaint for less than the amount claimed in the notice for Rs.10,00,000/- only. Thus it is contradictory as to what was the liability of the Petitioner herein. The Complainant who is a Doctor by profession is unable to state clearly on which dates, he had handed over the money to the Accused. The Respondent/Complainant also did not mark any document to prove that he has the capacity to pay such a huge amount. This is a case where the cheque amount was filled up for imaginary amount as per the whims and fancies of the Complainant. When the Complainant claims that he had evinced interest to purchase the property which was found to be a Poramboke land, then, he ought to have sought refund of the money. Further, the Complainant had already filed a suit in O.S. No. 11 of 2016, which was not disclosed in the complaint. When there is a dispute regarding the property and such dispute is pending in Civil



Court, the Complainant had preferred the Complaint against the Accused which is not maintainable in law. When the Complainant had sought civil remedy, he cannot seek criminal action against the Accused for the same transaction against him. The learned Judicial Magistrate failed to consider those aspects and had mechanically convicted the Accused based on the presumption under Section 139 of the Negotiable Instruments Act, 1881.

4. In the appeal filed by the Accused, he had clearly disclosed the grounds of appeal. The petitioner also disclosed that already there is a civil case pending between the Complainant and Accused. Still, the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee failed to appreciate those facts but mechanically dismissed the Appeal and confirmed the Judgment of the learned Judicial Magistrate. The learned Counsel for the Revision Petitioner therefore prayed for allowing this Criminal Revision as prayed for.

5. Per contra, the learned Counsel for the Respondent/Complainant vehemently objected to the line of the argument made by the learned Counsel for the Petitioner and submitted that this Court, in exercise of revisional power, cannot re-assess the evidence as may be exercised by the Appellate Court. The



Revision Court shall peruse the records and satisfy itself regarding failure of justice, if any, either to the Accused or the Complainant and cannot re-assess the evidence as an Appellate Court. The learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee and the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee had independently assessed the evidence and arrived at the same conclusion which need not be interfered by this Court exercising the power of Revision. Therefore, this Revision lacks merit and is to be dismissed.

Point for consideration:-

Whether the Judgment of the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee in STC.No.73 of 2016 dated 22.11.2017 and the Judgment of the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.A.No.81 of 2018 dated 20.12.2019 are to be set aside as perverse?

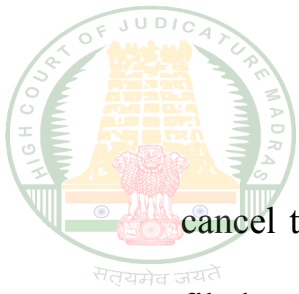
6. Heard the learned Counsel for the Revision Petitioner/Accused and the learned Counsel for the Respondent/Complainant.

7. Perused the records in STC. No. 73 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Tiruvallur



at Poonamallee and Criminal Appeal No. 81 of 2018 on the file of the learned Second Additional District and Sessions Judge, Tiruvallur and the Judgment of the learned Judicial Magistrate and the learned Second Additional District and Sessions Judge, Tiruvallur.

8. On perusal of the Complaint and the statutory notice issued under Ex.P-4, it is found that there had been money transactions for the purchase of property between the Complainant, who is a practicing Doctor and the Accused who was acquainted with the Complainant-Doctor as a patient. In the course of their acquaintance, the Complainant came to know that the Accused is a real estate dealer. Therefore, on the basis of the representations made by the Accused, the Complainant evinced interest to purchase a property. In this regard an agreement of sale came to be entered into between the Complainant and the Accused and his wife on 26.11.2014. As per the agreement, the Complainant, out of Rs.60 lakhs fixed as sale consideration paid Rs.50,00,000/- as advance and the balance payable was Rs.10 lakhs. However, even before the contract could be concluded by executing a sale deed, the Complainant came to know that the property which is covered in the agreement of sale dated 26.11.20214 is classified as 'Poromboke' in the revenue records. Therefore, the Complainant demanded the Accused to refund the money and to



cancel the agreement of sale dated 26.11.2024. In fact, the Complainant had filed suit in O.S. No. 11 of 2016 for bare injunction. On notice, a written statement was filed by the Accused, as first defendant, stating that in the legal notice dated 23.11.2015, it was stated that there was no advance paid by the Plaintiff/Complainant from the Accused/Defendants 1 and 2 on 26.11.2014.

9. On going through the written statement filed by the Accused, as first Defendant in O.S. No. 11 of 2016, it is clear that he had not whispered anything about the present complaint filed by the Complainant under Section 138 of The Negotiable Instruments Act, 1881. However, in the list of documents filed by the Defendant under Order VIII Rule, 1A CPC, the legal notice dated 23.11.2015 sent by the Complainant upon dishonour of the cheque and the reply notice dated 29.12.2015 issued by the Accused are listed. It is also to be mentioned that in the present complaint filed by the Complainant under Section 138 of The Negotiable Instruments Act, 1881 he had not whispered anything about the suit in O.S. No. 11 of 2016 filed by him.

10. Be that as it may. The cause of action for instituting the present complaint in S.T.C. No. 73 of 2016 is that the Complainant came to know that the property, which he proposed to purchase from the Accused and his wife by



entering into an agreement of sale dated 26.11.2014, is classified as “poromboke” in the revenue records and therefore, he sought for refund of the advance amount of Rs.50 lakhs. Towards such a legally enforceable debt and liability, out of Rs.50 lakhs, the Accused issued a cheque for Rs.5 lakhs each totalling Rs.10 lakhs. The cheques have been dishonoured which resulted in filing of the present Complaint. The suit was, on the other hand, filed apprehending that the Accused and his wife may alienate or encumber the suit scheduled property to the third parties.

11. The contention of the Accused in the Revision Petition that the trial Court and the learned Second Additional District and Sessions Judge, Tiruvallur failed to consider the fact that there was a civil dispute pending before Civil Court and therefore, the present complaint under Section 138 of The Negotiable Instruments Act, 1881 is not maintainable. Such a contention cannot be countenanced. The suit in O.S. No. 11 of 2016 was filed by the Respondent/Complainant for a bare injunction restraining the Defendants 1 and 2 from alienating or encumbering the property to third parties and restraining the Sub-Registrar, Avadi, the third defendant from entertaining any document for registration in respect of the suit scheduled property. Thus, the institution of or pendency of the suit in O.S. No. 11 of 2016 has got nothing to do with the



1881. It is needless to mention that S.T.C. No. 73 of 2016 was filed pursuant to dishonour of the cheques issued by the Accused. The S.T.C. No. 73 of 2016 filed under Section 138 to 142 of The Negotiable Instruments Act, 1881 has got nothing to do with the suit filed by the Complainant herein in O.S. No. 11 of 2016. The civil dispute springs out of an agreement of sale dated 26.11.2014 entered into between the Revision Petitioner and the Respondent. On the other hand, the S.T.C. No. 73 of 2016 was filed when the cheques issued by the Accused were dishonoured for “insufficient funds”.

12. Next, it is submitted by the learned Counsel for the Revision Petitioner that the trial Court as well as Appellate Court failed to consider the fact that the cheques were issued by the Accused as security and by misusing the cheque, the private complaint in S.T.C. No. 73 of 2016 has been filed. The learned Counsel for the Accused also contended that the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee and the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee, did not consider the evidence of the Complainant in cross-examination to the effect that the cheques were not issued for a legally enforceable liability. However, the Courts below had mechanically invoked



the presumption under Section 139 of the Negotiable Instruments Act, 1881 against the Accused. In this regard, if the statutory notice under Ex.P-4 and the Complaint filed by the Complainant are examined, it is seen that the Accused became acquainted with the Complainant/Doctor and in the course of his acquaintance, the Accused introduced himself as real-estate dealer and also represented that he is able to help the Doctor to purchase the house site. Believing the words of the Accused, the Doctor parted with a sum of Rs.50 lakhs on various dates, but the Accused had not registered any property in the name of the Doctor. Therefore, he had directed him to refund the amount and at that stage as an alternative, he had come forward to sell the property standing in his name and his wife. However, it came to light that the property so offered by the Accused is classified as Poramboke land and therefore the Complainant sought for refund of the amount. It is in that context, the Accused, issued the two cheques for Rs.5,00,000/- each. Even the two cheques were issued towards a part of the total debt of Rs.50 lakhs were returned for “insufficient funds”. In such circumstances, there is nothing to show that the cheques were given as a security will not arise.

13. The contention of the learned Counsel for the Accused that no ordinary prudent man will file a Complaint for lesser amount than the actual



amount due and payable to him. In other words, it is sought to be advocated that when the Accused is liable to pay Rs.50 lakhs, the Complainant ought to have obtained cheques for Rs.50 lakhs. On the other hand, two cheques for Rs.5 lakh each alone were issued which would create a doubt in the case pleaded by the Complainant. This submission of the learned Counsel for the Accused also cannot be accepted. The cheques were issued to discharge a part of the debt and even they were also dishonoured on presentation. It does not mean that the Accused is not liable to pay Rs.50 lakhs to the Complainant and he is liable to pay only Rs.10 lakhs. The fact remains that towards discharge of part of the debt, the Accused issued the Cheques for Rs.10 lakhs and upon presentation of those cheques for clearance, they were dishonoured. While so, the private complaint filed by the Complainant for Rs.10 lakhs will not in any manner absolve the liability of the Accused to pay the balance debt due and payable to the Complainant.

14. Further, in this case, the Accused is duty-bound to explain how the cheques signed by him have been received by the Complainant. Furthermore, the signature on the cheque was not disputed by the Accused. While so, automatically, the Trial Court has to draw a presumption against the Accused that the cheques came into existence in a lawful manner and they were issued



for a legally enforceable debt and liability. The cheques were issued for valuable consideration by the Accused in favour of the Complainant.

Therefore, naturally, the presumption under Section 139 of the Negotiable Instruments Act, 1881 has to be drawn against the Accused. As far as these two cheques are concerned, the claim of the Complainant is wholly justified.

15. In the light of the documents made available before the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee, the conviction of the Accused is found proper and not perverse. Such a conviction and sentence imposed on the Accused was also rightly upheld by the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee.

16. In the light of the above discussion, the point for consideration is answered against Accused and in favour of the Complainant. The Judgment of the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee in STC.No.73 of 2016 dated 22.11.2017 and the Judgment of the learned Second Additional District and Sessions Judge, Tiruvallur at Poonamallee in C.A.No.81 of 2018 dated 20.12.2019 are found proper which does not warrant any interference by this Court.



In the result, this ***Criminal Revision is dismissed.*** The judgment passed by the learned II Additional District Sessions Judge, Thiruvallur at Poonamallee in C.A.No.81 of 2018 dated 20.12.2019 confirming the Order of the learned Judicial Magistrate, Fast Track Court, Magisterial Level – II, Poonamallee made in S.T.C.No.73 of 2016 dated 22.11.2017 is confirmed.

The learned Judicial Magistrate, Fast Track Court-II (Magisterial level), Poonamallee, is directed to issue warrant in continuation of the Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court-II (Magisterial Level), Poonamallee in STC.No.73 of 2016 through jurisdictional Police Officials, in order to undergo the period of sentence imposed on the Accused and report compliance. The Accused is directed to surrender before the learned Judicial Magistrate, Fast Track Court-II within 15 days from the date of uploading this order on the website of this Court. The Complainant is within his discretion to file an appropriate application for recovery of money either by filing E.P before the Sub Court or before the learned Judicial Magistrate under the provisions of the Criminal Procedure Code. If the Accused absconds, the Complainant can initiate steps to proclaim the Accused as proclaimed offender by invoking powers under Section 82 of Cr.P.C., So that his assets, movable and immovable properties may be attached.



Criminal Revision Case No.378 of 2021

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17.04.2025

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

dh

To

- 1.The II Additional District Sessions Judge,
Thiruvallur at Poonamallee.
- 2.The Judicial Magistrate,
Fast Track Court-II (Magisterial Level),
Poonamallee.
- 3.The Section Officer,
Criminal Section,
High Court, Madras.



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Criminal Revision Case No.378 of 2021

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
CRL.RC.No.378 of 2021

17.04.2025