



Crl.Re. No.1423 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision No.1423 of 2017
and
Crl.M.P. Nos. 14049 and 14050 of 2017

A. Fathimuthu Bibi

.. Petitioner

Versus

S. Venkatesh

.. Respondent

Criminal Revision is filed under Section 397 and 401 of Cr.P.C., praying to set aside the Judgment dated 19.07.2017 passed in Crl.A. No. 207 of 2016 on the file of the Additional District and Sessions Court – II, Erode confirming the Judgment dated 31.05.2016 passed in STC.No.420 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court-II, Erode

For Petitioner : Mr. P. Narayana Prasadh
for Mr. M.N. Balakrishnan

For Respondent : Mrs. Nisha
for Mr. K.S. Jeyaganeshan

ORDER

This Criminal Revision had been filed to set aside the Judgment dated 19.07.2017 passed in Crl.A. No. 207 of 2016 on the file of the learned

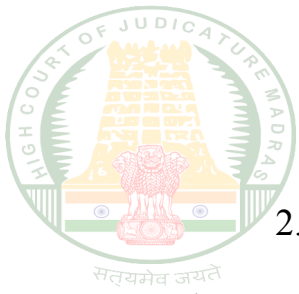


Crl.Re. No.1423 of 2017

Additional District and Sessions Judge – II, Erode confirming the Judgment dated 31.05.2016 passed in STC.No.420 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court-II, Erode.

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

2.1. As per the complaint before the learned Judicial Magistrate, Fast Track Court-II, Erode, the Accused was alleged to have borrowed Rs.10,00,000/- (Rupees Ten lakhs only) from the Complainant on 19.04.2012 to meet her urgent family expenses. At the time of borrowing the amount, the Accused alleged to have issued a post-dated cheque, mentioning the date as 19.06.2012, for the amount borrowed. When the said cheque was presented by the Complainant on 29.06.2012 with his Bank, it was returned as “**Account Dormant**”. Therefore, the Complainant had issued a notice on 07.07.2012 calling upon the Accused to pay the cheque amount. Though the notice was received by the Accused on 10.07.2012, he had not given any reply. After waiting for a reasonable time, the Complainant had filed the Complaint before the learned Judicial Magistrate, Fast Track Court-II, Erode to punish the Accused for having committed the offence under Section 138 of The Negotiable Instruments Act, 1881.



2.2. On appearance of the Accused , copies of the documents filed by the Complainant were furnished to him. When the Accused was questioned about the incriminating materials available against him, he denied the same. Therefore, the learned Judicial Magistrate, Fast Track Court-II, Erode ordered trial. During trial, the Complainant examined himself as P.W-1 and marked documents under Ex.P-1 to Ex.P-4. After completion of evidence of the Complainant, the Accused was examined by the learned Judicial Magistrate, Fast Track Court-II, Erode, under Section 313 of Cr.P.C. but he denied the evidence made available. After the proceedings under Section 313 of Cr.P.C, the Accused summoned the Manager of the Canara Bank, Karungalpalayam, Mr.Thamaraiselvan and examined him as D.W-1 and marked Ex.D-1.

2.3. The learned Trial Judge, on consideration of the oral and documentary evidence concluded that the Accused had not issued a reply notice to the notice dated 07.07.2012 sent by the Complainant. There is no material evidence filed by the Accused to show that the cheque was not issued for a legally enforceable debt or liability. When the Complainant had proved the initial presumption under law that the cheque was issued for a legally enforceable debt and liability, it is for the Accused to rebut such presumption. However, the Accused failed and neglected to rebut the initial presumption raised by the Complainant. While so, the Accused had committed an offence



punishable under Section 138 of The Negotiable Instruments Act, 1881.

Accordingly, the trial Court by the Judgment dated 31.05.2016 convicted the Accused for the offence punishable under Section 138 of The Negotiable Instruments Act, 1881 and sentenced her to undergo simple imprisonment for a period of one year with fine of Rs.5,000/-, in default, to undergo three months simple imprisonment.

2.4. On appeal, the learned II Additional Sessions Judge, Erode concluded that there is no merits in the Appeal preferred by the Accused and accordingly, by judgment dated 19.07.2017 dismissed the Criminal Appeal No. 207 of 2016 filed by the Accused and confirmed the Judgment of conviction passed by the trial Court.

2.5. Aggrieved by the dismissal of Appeal by the learned II Additional Sessions Judge, Erode, in Crl.A.No.207 of 2016, dated 19.07.2017, the Accused had filed this Criminal Revision Case.

3. The learned Counsel for the Revision Petitioner submitted that the complaint itself is vague. The Complainant does not state in the complaint, how he was acquainted with the Accused. The complaint is also silent as to whether the Complainant has the resources to pay such a huge amount. It was



stated that the Accused borrowed Rs.10,00,000/- (Rupees Ten Lakhs) for meeting the family expenses whereas when he was cross-examined by the learned Counsel for the defence, he had stated so many reasons other than household expenses. The learned Judicial Magistrate, Fast Track Court-II, Erode, failed to appreciate the materials available in the cross-examination and erroneously convicted the Accused based on the presumption under the Negotiable Instruments Act. Aggrieved by the same, the Accused had preferred an Appeal in Crl.A.No.207 of 2016 before the learned II Additional District and Sessions Judge, Erode. The Appeal was made over to the learned II Additional District and Sessions Judge, Erode. After hearing the arguments of the learned Counsel for the Appellant and the learned Counsel for the Respondent/complainant, the learned II Additional District and Sessions Judge, Erode had dismissed Crl.A.No.207 of 2016 by Judgment dated 19.07.2017.

4. The learned Counsel for the Revision Petitioner further submitted that there is no relationship or acquaintance between the Petitioner and Respondent and it is not clearly stated in the complaint. The learned Counsel for the Revision Petitioner relied on the reported ruling of the Hon'ble Supreme Court in the case of ***K. Subramani -vs- K.Damodara Naidu [(2015) 1 SCC 99]***, wherein it is held that the Complainant has to specifically state how he came to know about the Accused or for what purpose the money was borrowed.



Also, the Complainant has to state clearly the resources with him to extend a loan. When the complaint is bereft of those details merely under presumption available in favour of the drawee/holder of the cheque, the Accused cannot be convicted for the offence under Section 138 of The Negotiable Instruments Act, 1881.

5. Per contra, the learned Counsel for the Respondent/Complainant vehemently objected to the line of arguments made by the learned Counsel for the Revision Petitioner and contended that the concurrent findings given by the Courts below need not be interfered with by this Court in this Revision. The Accused in this case did not deny the signature or issuance of the cheque. Therefore, the presumption is against the Accused that the cheque was issued for a legally enforceable debt and liability. Further, the Accused did not issue a reply to the statutory notice issued by the Complainant. Considering the above, the Courts below have rightly convicted the Accused. This Court, in exercise of revisional power, need not re-assess the evidence to interfere with the judgment of the Courts below.

6. The learned Counsel for the Respondent/Complainant relied on the reported ruling of the Hon'ble High Court of Karnataka in the case of **Umaswamy -vs- K.N.Ramanath** reported in **CDJ 2006 KAR HC 521** and

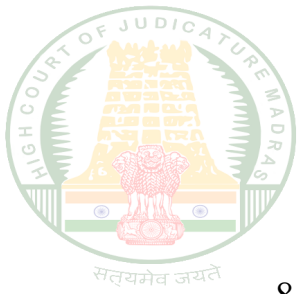


submitted that even if the cheque was issued for the purpose of security, it will not be a ground for the Accused to get acquittal. In this case, the cheque was not allegedly issued for security and it was allegedly issued for clearance of past debt.

7. The learned Counsel for the Respondent/Complainant also invited the attention of this Court to paragraph Nos. 8, 9 and 10 of judgment of the trial Court and contended that when the Accused had received the statutory notice and did not issue a reply, his defence, if any, in the trial need not be accepted. By issuing a statutory notice, an opportunity is given to the Accused to repudiate the statement of the Complainant. At the earliest point of time, when the Accused did not issue a reply, the defence, if any, raised at a later point of time need not be accepted. The Courts below, on proper analysis of the oral and documentary evidence, rightly convicted the Accused. The learned Counsel for the Respondent submitted that this Revision lacks merit and is to be dismissed.

Point for consideration:

Whether the Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode in STC.No.420 of 2012 dated 31.05.2016 and confirmed by the Judgment of the learned Additional District and Sessions Judge – II, Erode in Crl.A.No.207 of 2016 dated 19.07.2017 are to be set aside as perverse?



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8. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent. Perused the Judgment of the learned Judicial Magistrate, Fast Track Court – II, Erode in STC.No.420 of 2012 and the Judgment of the learned Additional District and Sessions Judge – II, Erode in Crl.A.No.207 of 2016.

9. It is the submission of the learned Counsel for Revision Petitioner that the trial Court as well as the Appellate Court failed to consider the evidence of the Complainant in cross-examination and erroneously convicted the Accused merely based on the presumption available under Section 139 of the Negotiable Instruments Act, 1881. In the Complaint, the Complainant had not stated about the facts as to how he had acquainted with the Accused, for what purpose the Accused sought money, whether he had the resources to pay such a huge amount etc., Even though the Accused did not issue a reply notice, it will not be a sole ground to convict the Accused. At first, the Complainant must state about the relationship between him and the Accused, particularly, the proximity of such relationship which made him to advance such a huge sum. Further, it is not known as to whether the Complainant had paid such a huge amount of Rs.10,00,000/- (Rupees Ten Lakhs) to the Accused by way of cash or cheque or any other mode.



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10. On a careful perusal of the complaint, it is seen that the complaint contains 6 paragraphs in 2 pages. The complaint was casually filed without any material particulars. While filing the complaint under Section 138 of The Negotiable Instruments Act, 1881, the Complainant thinks that it is enough if it is shown that a cheque signed by the Accused was presented for collection and it was rejected by the Bank. This complaint, in the opinion of this Court, has been filed under such notion by the Complainant in this case. Unfortunately, such a vague complaint presented by the Complainant was also accepted by the Courts below and recorded conviction against the Accused. The complaint is also silent as to how the Complainant knows the Accused. The complaint is also bereft of any material particulars as to how the amount of Rs.10 lakhs was paid by the Complainant to the Accused. In a complaint under Section 138 of The Negotiable Instruments Act, 1881 it is for the Complainant to raise an initial presumption that the amount was paid to the Accused through a legally acceptable mode. In other words, the Complainant must say as to the mode in which the amount was paid to the Accused . This is one of the important requirements while filing a complaint. In the present case, the Complainant merely states that he paid Rs.10 lakhs, the Accused issued a post-dated cheque, which he presented but dishonoured for the reason “account dormant”. Thereafter, the Complainant issued a statutory notice for which reply was not



received, hence, he had filed the complaint. This is the sum and substance of the complaint.

11. As rightly pointed out by the learned Counsel for the Revision Petitioner, what is the relationship between the Complainant and the Accused itself is not mentioned in the complaint. In the cross-examination of the Complainant, he had stated that the Accused and her husband have been very close for many years. It is not known what prevented the Complainant to disclose this in the complaint but only in his cross-examination after he was confronted with a question as to the relationship between the parties. Further, the Complainant merely stated that the Accused borrowed Rs.10,00,000/- (Rupees Ten Lakhs) for her urgent family expenses. However, the Complainant did not whisper anything as to how the sum of Rs.10,00,000/- (Rupees Ten Lakhs) was paid. Whether the amount was paid in cash or by way of cheque or any other mode is not mentioned. Therefore, the conduct of the Complainant gives rise to a suspicion as to whether he would have really paid such an amount to the Accused. Further, along with the complaint, the Complainant had filed five documents and they are (i) dishonoured cheque in original; (ii) copy of the dishonoured cheque; (iii) return memo of canara Bank; (iv) legal notice and (v) acknowledgment. The Complainant had not filed the Bank statement maintained by him to prove that he was resourceful enough to



pay Rs.10 lakhs. In any event, there is nothing to show the mode in which the sum of Rs.10 lakhs was paid to the Accused. When this initial requirement had not been fulfilled by the Complainant, he cannot question the non-issuance of reply by the Accused in this case.

12. When the cheque was presented by the Complainant, the cheque was returned, not for “insufficient funds”, but for reason “Account Dormant” which is not at all stated in the provisions under Section 138 of the Negotiable Instruments Act, 1881. The Accused had examined the Manager of the Bank where the Complainant maintains his account. The Accused maintained her account with the Indian Overseas Bank whereas the Complainant maintained his account with Canara Bank. The Manager of the Canara Bank was examined as D.W-1, who, in his deposition stated that the amount available with the account of the Complainant was Rs.7,000/- and odd on the alleged date of presenting the cheque. It shows that the Complainant did not have sufficient means on the date when he allegedly extended loan to the Accused. The Complainant as P.W-1 was cross-examined exhaustively by the learned Counsel for the Accused wherein he had stated that he has the means to pay Rs.10,00,000/- to the Accused. The Complainant further stated that he was maintaining a canteen in a Cinema Theatre and he was resourceful enough to pay such an amount to the Accused. In the further cross-examination, he had



stated that the Cinema Theatre was closed two years prior to the date of cross-examination. It was suggested by the learned Counsel for the Accused that the Cinema Theatre viz., Manickam and Srinivasa Theatre at Gobichettipalayam where he claims to have been running a canteen is closed for five years. He denied such a suggestion and claimed that only for two years, it had been closed. The next question is whether the Complainant has filed any document as proof of the claim that he is running a canteen in a Cinema Theatre and whether he had obtained license from the Competent Authorities for running a canteen. It was stated that he had entered into an agreement with the owner of the building where the Cinema Theatre is operating but he had not furnished any document to substantiate the same. The next question is whether the owner of the building will be examined as a witness. His answer is that owner of the building will not appear before the Court but he is ready to give a letter stating that the Complainant is running a canteen through which the Complainant earns Rs.40,000/- per month. However, the Complainant did not file any such document during the trial in the case.

13. When the Complainant was confronted with the question as to what is the intention of the Accused to borrow money from him, he replied that she borrowed money for marriage expenses. When asked as to whose marriage expenses the Accused borrowed money, especially when the children



of the Accused are in their tender age studying in nursery School, he replied that the amount was borrowed for the daughter of sister of the Accused.

However, the Complainant was confronted with the fact that the daughter of the Accused's sister was given in marriage even in the year 2012, and not at the time of borrowing the money, the Complainant simply denied it as false.

14. As to the resourcefulness to lend the money, the Complainant stated that he had obtained money from his close contacts and friends who are traders in Gobichettipalayam. When questioned as to whether it is recognised or registered trade, he was unable to answer.

15. On an overall assessment, the Complainant had filed the complaint without any material particulars. It is found that the Complainant does not have the wherewithal to extend a loan of Rs.10,00,000/- (Rupees Ten Lakhs) to the Accused. The Complainant had to establish his case that he had enough resources to extend loan supported by documentary proof. In this case, the Manager of the Canara Bank where the Complainant maintains his account was summoned by the Accused and examined as D.W-1 and he states that the amount available in the account of the Complainant is Rs.7,000/- and odd. This clearly proves the wherewithal of the Complainant to advance a huge sum of Rs.10 lakhs to the Accused. Even otherwise, if the Accused has the



resource to pay the amount through some other means, he ought to have filed documents to clear the air of controversy surrounding his case. Thus, it is clear that merely based on presumption under Section 139 of the Negotiable Instruments Act, 1881 conviction had been recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode and which was confirmed in Appeal by the learned Additional District and Sessions Judge – II, Erode dismissing the Appeal by the Accused .

16. The learned Counsel for the Revision Petitioner/Accused relied on the ruling in the case of ***P. Dhanam Vs. G. Arjunan*** reported in ***2019 1 MLJ Crl. 166***. Further, As per the reported ruling of the Hon'ble Supreme Court in the case of ***Rangappa Vs. Srimohan*** reported in ***(2010) 11 SCC 441***, the Accused need not enter the witness box to rebut the initial presumption raised by the Complainant. The Accused is well within his/her discretion to create preponderance of probability of the case regarding the claim made by the Complainant. Here, the Accused disputes the claim of Complainant through the cross-examination. From the cross-examination, it is found that the Complainant does not possess the wherewithal to advance Rs.10 lakhs to the Accused.

17. The averments in the Complaint itself create suspicion. When the



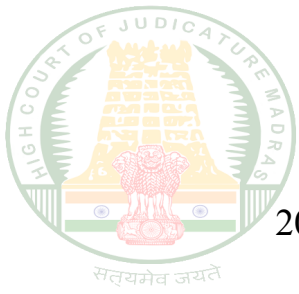
Complaint is silent as to how the Complainant was acquainted with the Accused, his resources to extend loan for a sum of Rs.10,00,000/- (Rupees Ten Lakhs) without getting any proper document from the Accused, the case of the Complainant has to be disbelieved. Both the trial Court and the Appellate Court had ignored the vital part of evidence available in the cross-examination of Complainant. Therefore, the argument of the learned Counsel for the Revision Petitioner is accepted and the argument of the learned Counsel for the Respondent is rejected.

18. Added to that, as per the guidelines of the Reserve Bank of India, the amount of Rs.25,000/- and above shall be transferred only as cheque or draft and not as cash. Here, the Complainant claims that he had handed over the money to the Accused purportedly in cash as there is nothing mentioned about it. Added to that, the Complainant had not furnished Income Tax as proof of his claim that he had wherewithal to extend such huge amount. The rulings cited on behalf of the Respondent in the case of **Umaswamy -vs- K.N.Ramanath** reported in **CDJ 2006 KAR HC 521** will not help the Respondent/Complainant because in the reported decision, the learned Judicial Magistrate found that the cheque was issued as security and such a cheque can be legally enforceable. Therefore, the learned Judge of the Karnataka High Court had convicted the Accused . Here, the defence of the Accused is that the



Complainant does not have wherewithal. Therefore, the reliance placed by the learned Counsel for the Respondent in the case of ***Umaswamy -vs- K.N.Ramanath*** reported in ***CDJ 2006 KAR HC 521*** and the Judgment of the Kerala High Court reported in the case of ***P.K.Uthupppu Vs. N.J.Varghese and Ors*** reported in ***MANU/KE/3126/2023*** are not helpful to his case. The learned Judge of the Kerala High Court had in the Judgment observed that the Revision Court can even rely on the materials submitted by the Complainant in order to raise a probable defence which creates doubt about the existence of affair, legally enforceable debt or liability without adducing separate evidence. The facts of the reported decision even though same are not applicable to the facts of this case. Hence, the reported rulings cited by the learned Counsel for the Respondent in the Revision Petition are rejected.

19. The learned Counsel for the Respondent had placed reliance on the case of ***Payal Malhotra Vs. Sulekh Chand in WP(Crl.).No.1366 of 2023***, the Judgment of the Delhi High Court and it is not found acceptable to the facts of this case. The Accused had raised an objection regarding the capacity of the Complainant to extend a huge amount. Here, the materials available in the cross-examination itself are sufficient to reject the claim of the Complainant on the basis of the presumption available.



Crl.Re. No.1423 of 2017

20. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner/Accused and against the Respondent/Complainant. The Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode in STC.No.420 of 2012, dated 31.05.2016 and confirmed by the Judgment of the learned Additional District and Sessions Judge – II in C.A.No.207 of 2016 dated 19.07.2017 are found perverse and the same are to be set aside.

In the result, this ***Criminal Revision Case is allowed.*** The Judgment of conviction recorded by the learned Judicial Magistrate, Fast Track Court – II, Erode in STC.No.420 of 2012, dated 31.05.2016 and confirmed by the Judgment of the learned Additional District and Sessions Judge – II, Erode in Crl.A.No.207 of 2016 dated 19.07.2017 are set aside. Consequently, connected Miscellaneous Petitions are closed.

17.04.2025

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



Crl.Re. No.1423 of 2017

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To

1. The Additional District and Sessions Judge-II,
Erode.
2. The Judicial Magistrate,
Fast Track Court – II,
Erode.
3. The Section Officer,
Criminal Section,
High Court Madras.



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Crl.Re. No.1423 of 2017

SATHI KUMAR SUKUMARA KURUP, J

dh

Order made in
Crl.R.C.No.1423 of 2017

17.04.2025