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Crl.R.C(MD)No.785 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.01.2025

Pronounced on : 19.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.785 of 2024

and

Crl.M.P(MD)No.8406 of 2024

V.Udayaraj

... Petitioner

Vs.

Jagafar Ali

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for records and set aside the order, dated 31.01.2024 passed by the Additional District and Sessions Judge (FTC), Kumbakonam in Crl.M.P.No.15 of 2023 in C.A.No.43 of 2023.

For Petitioner : Mr.D.Balamurugapandi

For Respondent : Mr.S.Sankar

ORDER

This Criminal Revision Case is filed to set aside the order, dated 31.01.2024 passed in Crl.M.P.No.15 of 2023 in Crl.A.No.43 of 2023 on the file of the learned Additional District and Sessions Judge (FTC), Kumbakonam.



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2.The brief facts of the case:

The respondent filed a case in STC.No.35 of 2021 on the file of the learned Judicial Magistrate No.1, Kumbakonam against the revision petitioner under Section 138 of the Negotiable Instruments Act on the allegation of dishonor of the cheques for Rs.22,00,000/-, which was issued by the revision petitioner towards loan obtained by him from the respondent. The revision petitioner contested the case. Both sides adduced oral and documentary evidences. On the respondent's side, P.W.1 was examined and Ex.P.1 to Ex.P.5 were marked. On the revision petitioner's side, no witness was examined and no exhibit was marked. After hearing both sides and after considering the evidences, the learned Judicial Magistrate No.1, Kumbakonam passed the judgment, dated 20.12.2022 convicting the revision petitioner U/s.138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and directed to pay compensation of Rs.25,00,000/- to the respondent, in default, to undergo simple imprisonment for a period of three months.

3. Challenging the judgment of the trial Court, the revision petitioner has preferred the appeal in Crl.A.No.43 of 2023 before the learned Additional District and Sessions Judge (FTC), Kumbakonam.



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Pending appeal, the revision petitioner has filed the petition in Crl.M.P.No.15 of 2023 U/s.391 of Cr.P.C. to receive additional document, which was objected by the respondent. After consideration of both sides arguments and after perusal of the records, the learned Additional District and Sessions Judge (FTC), Kumbakonam has dismissed the petition in Crl.M.P.No.15 of 2023 in Crl.A.No.43 of 2023 by its order, dated 31.01.2024. Challenging the said order, the revision petitioner has moved this Court by preferring the present criminal revision case.

4. Heard the learned counsel appearing for the revision petitioner and the learned counsel for the respondent. Perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the respondent has not denied the document in his counter as there was no such transaction between them and also has not denied the handwritten document and the Appellate Court failed to send the document for handwriting expert's opinion. The petitioner specifically stated during questioning U/s.313 of Cr.P.C. that he had paid Rs.10 lakhs and so the same has been mentioned in the document. The revision



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petitioner has every right to prove his defence which would not be curtailed in the appeal. Therefore, the criminal revision case may be allowed.

6. The learned counsel for the respondent has objected the criminal revision case and contended that after conviction awarded by the trial Court, the revision petitioner has filed the alleged document which consisted of the hand written. The Appellate Court has correctly held that there is no title regarding the document, and there is no mentioning of particulars who had written the alleged accounts and payment in respect of whose transaction. In the absence of such particulars, the document that too only a photocopy could not be taken into consideration. Moreover, the revision petitioner admitted his entire liability of Rs.22 lakhs before the Lok Adalat. Only to drag on the proceedings from payment of compensation amount, the petitioner has filed the petition and after dismissal of that petition, has filed this present criminal revision case. Therefore, the criminal revision case may be dismissed.

7. On hearing both sides rival arguments and on perusal of records, it is clear that the respondent has filed the main case under Section 138 of the Negotiable Instruments Act against the revision petitioner



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alleging that the cheque for Rs.22,00,000/- issued by the petitioner was dishonoured and the same was taken on file as S.T.C.No.35 of 2021 by the learned Judicial Magistrate No.1, Kumbakonam. The trial Court found the revision petitioner guilty U/s.138 of the Negotiable Instruments Act and awarded sentence as stated supra. The revision petitioner has preferred the criminal appeal in Crl.A.No.43 of 2023 before the Additional District and Sessions Court (FTC), Kumbakonam. During the pendency of appeal, the revision petitioner has filed the petition in Crl.M.P.No.15 of 2023 seeking permission to receive the petition mentioned document. On perusal of document in question, it is seen only a handwritten of amount and calculation, there is no nomenclature mentioned and also names of persons and what type of account is not mentioned.

8. On perusal of impugned order, the appellate judge has observed in paragraph No.7 as under:

“7.it is school note paper in which there is a handwritten calculation without any heading, nomenclature and without any signature. There is also no details about who had written it and the detail of calculations belongs to whom. It contains certain amounts and calculation but



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did not speak about the principal amount, interest or other things. There is no date or other details arrived some calculation in total.....this piece of paper on verification will be of no use for final conclusion to be arrived at...”

On perusal of alleged document, the above versions are found to be correct. The revision petitioner is not able to file contra material against the above version.

9. As rightly argued by the learned respondent's counsel, the revision petitioner has produced the alleged document after conviction and also what prevented him to file the same before the trial Court and to take steps to send the document for handwriting expert opinion. There is no acceptable material on the revision petitioner side. Moreover, there is no denial by the revision petitioner against the argument of the respondent that the revision petitioner admitted the entire liability of Rs.22 lakhs before the Lok Adalat and this petition and criminal appeal is filed only to drag on the proceedings. Considering all the above facts and circumstances of this case, this Court is of the view that the impugned order does not warrant any interference by this Court and the same need not be set aside.



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10. In the result, this Criminal Revision Case is dismissed.

The order, dated 31.01.2024 passed in Crl.M.P.No.15 of 2023 in Crl.A.No.43 of 2023 on the file of the learned Additional District and Sessions Judge (FTC), Kumbakonam, is confirmed. Consequently, the connected Miscellaneous Petition is closed.

19.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Additional District and Sessions Judge (FTC),
Kumbakonam
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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