

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.03.2012

Coram

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.1213 of 2009

M.Manoharan

.. Petitioner

Vs.

S.Ramasamy

.. Respondent

Prayer :- Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., against the judgment passed in C.A.No.76 of 2009 on the file of Ist Additional Sessions Court, Erode, dated 15.09.2009, confirming the sentence passed by the learned Judicial Magistrate-III, Erode in C.C.No.47 of 2008, dated 06.11.2008.

For Petitioner : Mr.A.K.Kumaraswamy

For Respondent : Mr.I.C.Vasudevan

ORDER

The revision petitioner herein / appellant / accused has filed the Criminal Revision in Crl.R.C.No.1213 of 2009 against the judgment made in C.A.No.76 of 2009 on the file of I Additional Sessions Court, Erode, dated 15.09.2009, confirming the judgment made in C.C.No.47 of 2008 on the file of Judicial Magistrate-III, Erode, dated 06.11.2008.

2. The complainant's case is as follows:-

On 01.08.2007, the accused had borrowed a sum of Rs.4,37,500/-, in cash, from the complainant. To settle the said loan, the accused had issued a cheque dated 25.08.2007 (cheque No.372239) for a sum of Rs.37,500/- and had also issued cheques dated 30.08.2007, 31.08.2007, 29.09.2007, 30.09.2007 bearing cheque Nos.372238, 372235, 372236, 372237 respectively, each for a sum of Rs.1,00,000/- drawn on Indus in Bank, Erode. On the request of the accused, the complainant deposited the said cheques with his bankers viz., Karnataka Bank, Teachers Colony, Erode Branch on 17.12.2007, but it was returned due to insufficient funds in the account of the accused on 18.12.2007. A lawyer's notice regarding

the return of cheques was sent to the accused on 22.12.2007. The accused had received the notice on 26.12.2007, but had neither replied to the notice nor paid any money to the complainant. Hence, the complainant had preferred a complaint under Section 138 of Negotiable Instruments Act against the accused before the Court of Judicial Magistrate-III, Erode.

3. The accused pleaded not guilty before the trial Court and hence enquiry was initiated.

4. On the complainant's side, one witness was examined as P.W.1 and six documents were marked as Exs.P1 to P6 viz., Ex.P1 cheque dated 25.08.2007, Ex.P2-cheque dated 30.08.2007, Ex.P3-cheque dated 31.08.2007, Ex.P4-return memo series (three nos) dated 18.12.2007, Ex.P5-lawyer's notice dated 22.12.2007, Ex.P6-postal receipt dated 22.12.2007 and Ex.P7-acknowledgment card dated 26.12.2007. On the side of the accused, two witnesses were examined as R.W.1 and R.W.2 and three documents were marked as Exhibits R1 to R3 viz., Ex.R1-the form showing proof of opening of bank account by the accused, Ex.R2- documents for proof of address and Ex.R3 copy of counterfoil of cheques showing deposits and withdrawals from the bank account of accused.

5. P.W.1-Ramasami, had adduced in his evidence that the accused-Manoharan had borrowed a sum of Rs.4,37,500/- from him as loan on 01.08.2007; that in order to repay the said loan, the accused had issued cheque bearing serial No.372239, dated 25.08.2007 for a sum of Rs.37,500/- and had also issued cheques dated 30.08.2007, 31.08.2007, 29.09.2007 and 30.09.2007 bearing serial Nos.372238, 372235, 372236 and 372237 respectively, each for a sum of Rs.1,00,000/- drawn on Indus in Bank, Erode Branch; on the request of the accused, he had deposited the above said cheques in his bank account with bankers viz., Karnataka Bank; that all the cheques were returned on 18.12.2007, dishonoured, due to insufficient funds in the account of the accused; that a lawyer's notice was sent to the accused (Ex.P5) and the accused had received it on 26.12.2007 (Ex.P6); that even after receipt of notice, the accused had neither replied nor paid the loan amount; that he had filed the complaint to get compensation for the returned cheques from the accused.

6.R.W.1-Murthy, had adduced in his evidence that he had seen the accused Manoharan at a shop named "Gomathi Tex", where he had gone to purchase yarn; that he had heard the accused asking one Sudhakar to return the cheques given by him; that the said Sudhakar had assured the accused that he would return them within two days; that the accused had told Sudhakar that he had come there on a number of occasions for getting his cheques back and had also told him that the said cheques had not been filled up; that he along with one Rajendran were witness to the above altercation; that 10 days after this, the accused had told him that the said cheques given by him had been deposited and that a case regarding the returned cheques had been filed against him by one Ramasami.

<https://hcservices.ecourts.gov.in/hcservices/> P.W.2-Ramasami, the Manager of Karanataka Bank adduced

evidence that the accused had started a current account in their bank (A/c.No.1169) on 29.05.2007; that the admission forms are Ex.R1 and the documents given for address proof are Ex.R2; that the returns showing income and expenditure has not been filled in the necessary format, the application would be rejected; that when the said account was opened, only the name of the person introducing the accused and the account number was mentioned and that no other details had been filled in the opening of account form.

8. It was argued on the side of the accused that the cheques given to Sudhakar, the Proprietor of "Gomathi Tex", as security, had been received by the complainant and that the complainant, in order to rake revenge against the accused, had filed the present complaint. The learned Magistrate, however was of the opinion that no action had been taken by the accused to get the cheques, supposed to be given as security, from the said Sudhakar, and no documentary or oral evidence had been led into support this contention. Further, it is seen from the evidence of R.W.1, that he had visited the said "Gomathi Tex" in the month of April 2007 and had heard the accused demanding return of the cheques given as security to one Sudhakar and that 10 days after this, the accused had informed him that one Ramasami had filed a case against him, by using the said cheques. However, the learned Magistrate was not inclined to believe the evidence of R.W.1 as the case cheque was presented only in the month of December 2007 and the case subsequently was filed on 22.01.2008. As such, the learned Magistrate held that when the cheque itself was deposited on 17.12.2007, there was no possibility of the case being registered against the accused in April 2007. As such, the learned Magistrate was not inclined to believe the contention of the accused that the cheque given as security to the said Sudhakar had been misused by the complainant in this case. The learned Magistrate after scrutiny of the oral and documentary evidence held the accused guilty of offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of eight months and also imposed a fine of Rs.2,000/- in default of payment of fine, the accused was to undergo further simple imprisonment for two months.

9. Aggrieved by the judgment and conviction passed by the trial Court, the accused has preferred a Criminal Appeal in C.A.No.76 of 2009 before the Ist Additional Sessions Court, Erode. The learned Sessions Judge, on scrutiny of the oral and documentary evidence was of the view that the appellant had neither sent any reply to the notice issued by the complainant nor had examined himself to deny the allegations made in the complaint and subject himself to cross-examination by the complainant. Hence, the learned judge, after scrutiny of grounds of appeal held that a mere statement by the accused that some blank signed cheques issued by him to another person, Sudhakar had been misused by the respondent without any acceptable documentary evidence is not sustainable and hence dismissed the appeal and confirmed the judgment of the trial Court.

preferred this Criminal Revision in Crl.R.C.No.1213 of 2009 before this Court.

11. The learned counsel for the revision petitioner has argued that the learned judge failed to note that no consideration was passed for the cheque in dispute and as such conviction based on the said cheques is not maintainable. It was also pointed out that the learned judge failed to note that except for the interested testimony of the complainant, no independent witness was examined to prove the case of the complainant and alleged borrowal made by the revision petitioner. It was also contended that the learned judge failed to see that the complainant had not produced his account books to prove that the money covered under the cheque was given as loan on the said date and he had sufficient means to lend money on the said date. It was also pointed out that the learned judge failed to note that the complainant having stated that he was involved in money business had not produced any document to prove his business.

12. The learned counsel for the respondent / complainant argued that the accused had issued cheques in the name of the complainant after duly signing it. The cheques were presented in the complainant's bank account and the same were returned unpaid. Therefore, all necessary legal formalities had been adhered to and case was proceeded against the accused. After recording evidence of both sides and after perusing the relevant records, the learned judge had come to a conclusion that the accused had committed offence under Section 138 of Negotiable Instruments Act. The same was confirmed by the appellate Court, and the appeal was dismissed. The learned appellate judge had also assigned the reason that there is no deviation or violation of the procedure in the judgment passed by the trial Court. The learned counsel further submits that the case was proved against the accused. As such, the complainant is entitled to receive compensation from the accused. This was not considered by the Courts below.

13. On verifying the facts and circumstances of the case, submission made by the learned counsels on either side and on scrutinizing the judgment and conviction passed in C.A.No.76 of 2009, on the file of Ist Additional Sessions Court, Erode, this Court is of the view that the 8 month period of simple imprisonment imposed on the accused is on the higher side. Therefore, this Court reduces the sentence of simple imprisonment from 8 months to 6 months. The penalty of a sum of Rs.2,000/- imposed on the accused is waived. However, this Court directs the accused to pay the compensation of a sum of Rs.2,37,500/- (Rupees Two Lakhs Thirty Seven Thousand and Five Hundred only) to the complainant. Hence, this Court directs the learned Judicial Magistrate-III, Erode to issue bailable warrant to the accused and secure him into judicial custody in order to undergo simple imprisonment for a period of six months. If the accused pays the compensation amount, as directed by this Court, to the complainant or deposits it into the credit of C.C.No.47 of 2008, on the file of Judicial Magistrate-III, Erode before being remanded into judicial custody, he would be set at liberty, and this Court order

would not be operated against the accused. This Court imposed a condition on the accused on 15.12.2009, to deposit a sum of Rs.75,000/-. If the condition has been complied with by the accused, the accused has to deposit the balance amount of compensation as directed by this Court. This modification ordered by this Court has been made by invoking its discretionary power.

14. Resultantly, the above Criminal Revision is disposed of with the above observations. Consequently, the judgment and sentence passed in C.A.No.76 of 2009 on the file of I Additional Sessions Judge, Erode dated 15.09.2009, confirming the conviction and sentence passed in C.C.No.47 of 2008, on the file of Judicial Magistrate-III, Erode, dated 06.11.2008 is modified. Accordingly, ordered.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

r n s

To

1. The Judicial Magistrate-III,
Erode.
2. The I Additional Sessions Court,
Erode.

+1cc to Mr.I.C.Vasudevan, Advocate Sr 21900

+1cc to Mr.A.K.Kumaraswamy, Advocate Sr 21920

SJ(CO)
km/5.6.

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Cr1.R.C.No.1213 of 2009