

(2010) 12 MAD CK 0270

Madras High Court (Madurai Bench)

Case No: Criminal R.C. (MD) . No. 69 of 2007

V. Deivanayagam

APPELLANT

Vs

K. Saravanan

RESPONDENT

Date of Decision: Dec. 3, 2010

Acts Referred:

- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2011) 1 LW(Cri) 312

Hon'ble Judges: S. Tamilvanan, J

Bench: Single Bench

Advocate: K. Samidurai, for the Appellant; D. Saravanan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Tamilvanan, J.

Challenging the judgment, dated 31.03.2006 made in C.A. No. 64 of 2005, on the file of I Assistant Sessions Judge, Tirunelveli, confirming the judgment of the Judicial Magistrate, Tenkasi in C.C. No. 542 of 2003 dated 17.02.2005, the criminal revision has been preferred by the accused therein.

2. On the complaint given by the Respondent herein u/s 138 of Negotiable Instruments Act, the case was taken on file by the trial Court on the ground that the revision Petitioner/accused had issued a cheque, dated 15.06.2003 for a sum of Rs. 1 lakh for the consideration received, however, the cheque was dishonored by the bank, while the same was presented for payment. The cheque dated 15.06.2003 dishonored by the bank was marked as Ex.A.1 before the trial Court. The endorsement dated 26.07.2003 made by the Manager, Indian Overseas Bank, Kutralam was marked as Ex.A.2. Debit Invoice, dated 31.07.2003 made by the Bank of India in the account of the Respondent / complainant is marked as Ex.P.3. Subsequently, the Respondent / complainant issued a legal notice, dated 06.08.2003, the copy of the same has been marked as Ex.P.4. The revision Petitioner/

accused received the notice, for which, the postal acknowledgment was marked as Ex.P.5.

3. According to the learned Counsel appearing for the Respondent, in spite of service of notice, the Respondent has neither settled the dues, nor sent any reply. Hence, the complaint u/s 138 of Negotiable Instruments Act was filed by the Respondent / complainant before the court below. The trial Court has found that the cheque was dishonored due to insufficient funds and held based on the evidence that the alleged guilt against the revision Petitioner / accused has been proved beyond reasonable doubt. The trial court, while convicting the revision Petitioner / accused u/s 138 of Negotiable Instruments Act has imposed a sentence of 1 year S.I. and pay a fine of Rs. 400/-, in default, to undergo 3 months S.I. and the appellate Court confirmed the same. Aggrieved by which, the revision has been preferred by the revision Petitioner herein. The learned I Assistant Session Judge, confirming the conviction and sentence, dismissed the appeal. The revision Petitioner has not raised any legal issues in the revision on the issuance of cheque and passing of consideration. I am of the view that the concurrent findings of the Court below is based on the evidence which would warrant no interference by this Court. The Respondent has not raised any legal points to reverse the concurrent findings of the Court below, to hold the same as perverse or unsustainable in law.

4. Learned Counsel for the revision Petitioner submitted that there is no independent witness on the side of the Respondent/complainant and therefore, based on records, the Court could have recorded acquittal, instead of convicting the accused. In support of his contention, he relied on the decisions in M.A. Nachimuthu v. N. Ravichandran reported in 2007(1) MWN DCC 75 and K. Chathukutty and Ors. v. K.S. Prasanna Venkitesan and Anr. reported in 2007 CrI.L.J 1120.

5. On the other hand, learned Counsel for the Respondent/complainant submitted that the cheque was dishonoured by the Bank only due to insufficient funds and in spite of service of legal notice, the Petitioner had not chosen to send any reply, hence, the conduct of the revision Petitioner / accused would also support the prosecution. The issuance of cheque was not disputed by the Petitioner / accused, either by way of reply notice or by adducing any evidence. In support of his contention he relied on the decision in [Hiten P. Dalal Vs. Bratindranath Banerjee](#), .

6. In the instant case, the Respondent/complainant himself was examined as P.W.1 and also produced relevant supporting documents, to establish his case u/s 138 of Negotiable Instruments Act. In spite of receipt of legal notice sent by the Respondent / complainant, the revision Petitioner has not sent his reply, for the reasons best known to him. Even before the Court below, the revision Petitioner / accused has not disputed the issuance of cheque by adducing any oral or documentary evidence. It is not in dispute that there is no positive oral and documentary evidence in favour of the Respondent / complainant, however, rebuttal evidence was let in by the revision Petitioner / accused.

7. On the aforesaid facts and circumstances, I am of the view that there is no error on the part of the Courts below in drawing the concurrent findings, on the execution of the cheque and passing of consideration. Therefore, I am of the view that there is no need for interference of this Court with regard to the concurrent findings of the Courts below in convicting the accused. Therefore, so far as the conviction is concerned, the criminal revision is liable to be modified.

8. In the result, the revision petition is modified, so far as the sentence is concerned and accordingly, the revision Petitioner / accused is directed to pay a fine of Rs. 1,00,000/- (Rupees one lakh only) in addition to the fine amount already paid and the same shall be paid as compensation to the Respondent / complainant, instead of the sentence for a period of one year S.I, imposed by the Court below. The fine amount shall be paid before the Court below within six weeks from the date of receipt of a copy of this order. If the fine amount is not paid and the conditional order is not complied with, the Petitioner / accused shall undergo the sentence already imposed by the Court below.