

(2012) 06 MAD CK 0193

In the Madras High Court

Case No : Criminal R.C. No. 1057 of 2007 and M.P. No. 1 of 2007

N.R. Imayavaramban

APPELLANT

Vs

P. Senthilvel and Another

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 209, 380, 406, 442, 463

Citation : (2012) MLJ(Cri) 757

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : N.R. Imayavaramban, Party in Person, for the Appellant; A. Sasidharan for Mohammed Riyaz, Government Advocate (Crl. Side), for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The respondent herein/complainant had filed a case in C.C. No. 202 of 2002, on the file of Judicial Magistrate-II, Coimbatore, against the revision petitioner/accused for an offence u/s 138 of Negotiable Instruments Act, stating that the accused had received a sum of Rs. 25,000/-, on 2.3.1998, as a loan, agreeing to pay the said amount with interest. In order to discharge the liability of the said loan amount, he had issued a cheque on 2.1.2001 for a sum of Rs. 42,000/-, drawn on State Bank of India, R.S. Puram, Coimbatore bearing cheque No. 900886. The said cheque was presented on 2.1.2001 for collection. It was returned unpaid. Hence, the case was levelled against the revision petitioner herein. On the side of the complainant, the complainant was examined as P.W. 1 and one Mr. Tamizharasan, Bank official was examined as P.W. 2 and ten documents were marked as Exhibits P-1 to P-10, viz., Exhibit P-1-dishonoured cheque, Exhibit P-2-returned memo, Exhibit P-3-legal notice, Exhibit P-4-acknowledgment card, Exhibit P-5-copy of the pronote, Exhibit P-6-copy of the case filed in City Civil Court, Exhibit P-7-copy of the counter filed by the respondent in the above case, Exhibit P-8-copy of the bank account statement of

the complainant, Exhibit P-9-copy of the cheque collection register and Exhibit P-10-authorization given by the Bank to P.W. 2 to represent in the said case. On the side of the accused, no witness, no documents.

2. P.W. 1-Senthilvel had adduced evidence that on 2.3.1998, the accused had borrowed a loan of Rs. 25,000/- from him for his business and family needs and the accused had also given a promissory note for the said loan. In order to repay the said loan, the accused had issued a cheque drawn on Bharath State Bank, R.S. Puram, Coimbatore, cheque No. 900886, dated 2.1.2000, for an amount of Rs. 42,000/- to and in favour of him. The said cheque was deposited for encashment in his account at the Tamil Nadu Mercantile Bank, but it was returned unpaid on 11.1.2001 due to insufficient funds. Subsequently, lawyers notice was sent to the accused on 23.1.2001 and was received by the complainant on 29.1.2001. Even after receipt of the said notice, the complainant did not pay the said amount.

3. P.W. 2-Tamizharasan, Assistant Manager of Tamil Nadu Mercantile Bank, Pollachi Branch had adduced evidence that the complainant had a savings bank account (bank account No. 37220); that on 2.1.2001, when the impugned cheque was sent for encashment, it was returned unpaid through return memo dated 12.12.2001. In support of his evidence, he had marked Exhibit P-8 and P9, bank account statement of the complainant and copy of cheque collection register and Exhibit P-10-the authorization given by his bank manager permitting him to give evidence in the instant case.

4. On recording the evidence of the petitioner side, and on perusing the documentary evidence, and after hearing the arguments of both the sides, the learned Magistrate had come to a conclusion that the accused had received a sum of Rs. 25,000/- as a loan and in order to discharge the said loan, he had issued the cheque for a sum of Rs. 42,000/- and the same was dishonoured. Therefore, the accused was found guilty u/s 138 of Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and was also imposed a fine of Rs. 3,000/- in default of payment of fine, he was to undergo further period of simple imprisonment for four months.

5. Aggrieved by the said judgment and conviction, the accused had filed an appeal before the Additional District and Sessions Judge cum Fast Track Court-I, Coimbatore.

6. On considering the appeal grounds and on hearing the arguments of the learned counsels on both sides, and on perusal of the trial Court's conviction and sentence, the learned District Judge dismissed the said appeal in C.A. No. 176 of 2007, on 11.7.2007, and confirmed the trial Court's conviction and sentence.

7. Aggrieved by the said conviction and sentence, the above revision has been filed.

8. The revision petitioner has appeared as a party-in-person and submitted that

the case was misconstrued against him. The impugned cheque was misused and filled by the complainant, due to enmity between himself and one Sivakumar. The disputed cheque was issued on 2.1.2001, for a sum of Rs. 42,000/- drawn on State Bank of India, R.S. Puram, Coimbatore bearing cheque No. 900886 and the said cheque was presented on 2.1.2001 for collection. The revision petitioner further submitted that he had filed a complaint in C.C. No. 371 of 2000, on the file of Judicial Magistrate-I, Coimbatore, against four persons viz., 1) Doraiswami Chettiar, 2) D. Sivakumar, 3) S. Kannan and 4) Radha, for offence under Sections 406, 463, 442, 380 and 209 of I.P.C. In the said case, all the four accused did not appear before the Judicial Magistrate-I, Coimbatore on 20.12.2000. Hence, non-bailable warrant was issued on the accused. The same was executed against the second accused, viz., Sivakumar and he was remanded into judicial custody till 26.12.2000. The revision petitioner further submitted that on 11.1.2001, 16 days after the release of the second account in his private complaint, the State Bank of India cheque bearing No. 900886, was fabricated in the name of P. Senthilvel, friend of the third accused in his private complaint and the date was put as 2.1.2001 and the same was presented for collection 2.1.2001. Therefore, all the above mentioned persons have colluded with each other and fabricated the cheque for their own convenience and filed the case. The revision petitioner further submits that there is no prima facie case on the side of the complainant.

9. The revision petitioner further submits that the handwriting and ink in which the name is written differs from the handwriting and ink in which the amount had been written in words and numbers and the handwriting and ink in which the date is written in numbers differs from the handwriting and ink in which the amount is written in numbers. The revision petitioner has filed a statement of accounts, in order to prove who all had money transactions with him and that he did not have any money transactions with any of the proxies of the accused in his private complaint.

10. On considering the entire facts and circumstances of the case and arguments advanced by the revision petitioner and on scrutinizing the impugned judgment of the Courts below and on going through the statement of accounts furnished by the revision petitioner, the Court is of the considered view that a criminal complaint in C.C. No. 371 of 2000, on the file of Judicial Magistrate-I, Coimbatore against the relatives of the complainant, exists and that in that complaint, the second accused was arrested and remanded into judicial custody on 23.12.2000. Thereafter, the complaint in C.C. No. 207 of 2002 had been filed against the revision petitioner. It clearly shows that there is bias and a clear motive, on the part of the complainant in making the said complaint. Further, it is seen that the contentions of the revision petitioner regarding the impugned cheque cannot be swept away as not credible as he had backed his contentions by reliable evidence. It is also seen that there is discrepancy in the handwritings found in the body of the cheque and in the name and date mentioned in the cheque. Hence, taking everything into account, this Court is of the view that the respondent has not proved his case beyond doubt. Hence, this Court allows the

revision and the accused is set at liberty. In the result, the criminal revision is allowed. Consequently, the judgment and conviction passed in C.A. No. 176 of 2007, on the file of Additional District and Sessions Judge cum Fast Track Court-I, Coimbatore, dated 11.7.2007 confirming the conviction and sentence passed in C.C. No. 207 of 2002, dated 20.10.2005, on the file of Judicial Magistrate-II, Coimbatore is set-aside. Consequently, connected miscellaneous petition is closed.