

N.Abraham Vs. S.Esakki

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Court : Chennai

Decided On : Mar-09-2015

Judge : M.Sathyanarayanan

Appellant : N.Abraham

Respondent : S.Esakki

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 09.03.2015 CORAM THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN CRL.R.C.(MD)No.513 of 2008 N.Abraham : Petitioner/Accused versus S.Esakki : Respondent/Complainant Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of the Code of Criminal Procedure praying to call for the records and set aside the conviction and sentence imposed by the learned District Munsif, Sathankulam in C.C.No.8/06, dated 23.11.2006 and the conviction and sentence imposed by the learned Additional Sessions Judge & Fast Track Court No.1, Tuticorin in C.A.No.158/06 dated 11.02.2008.

!For Petitioner :Mr.B.Pugalendhi ^For Respondent :No appearance :

ORDER

The revision petitioner/accused is the accused in C.C.No.8 of 2006 filed under Section 138 of Negotiable Instruments Act, on the file of the Court of the learned District Munsif cum Judicial Magistrate, Sathankulam.

The respondent/private complainant has filed the said complaint seeking prosecution of the revision petitioner/accused under Section 138 r/w 141 of the Negotiable Instruments Act.

2.

The trial Court, after full-fledged trial, has found him guilty under Section 138 of the Negotiable Instruments Act and imposed the sentence of one year rigorous imprisonment and a fine of Rs.4,000/-, with default sentence of three months simple imprisonment, vide judgment dated 23.11.2006.

The revision petitioner/accused aggrieved by the conviction and sentence recorded by the trial Court, preferred an appeal on the file of the Court of the Additional Sessions/Fast Track Court, No.I, Thoothukudi.

3.

Mr.B.Pugalendhi, learned counsel appearing for the revision petitioner has invited the attention of the Court to the impugned judgment and would contend that the respondent/complainant was examined as P.W.1.

During the course of his cross-examination, it has been elicited that the wife of the petitioner/accused has filed a complaint against him for outraging her modesty and that apart, one more complaint has been given against him with regard to the act of cheating and it was also admitted by him and therefore, in the light of the said admission, it could be considered that the cheque in question has not been issued towards discharge of legally enforceable debt and further submitted that both the courts below have failed to appreciate the procedure in proper perspective and prays for interference.

4.

In spite of notice sent to the sole respondent, service is awaited.

Though private notice is ordered, proof of sending the same has not been filed.

5.

It is the case of the respondent/complainant that he and the accused are friends for so many years and the revision petitioner/accused, for the purpose of meeting out the marriage expenses of his daughter borrowed a sum of Rs.2 lakhs on 05.09.2004 with a promise to repay the same within a period of two months from the date of borrowing and on the same day, drawn a cheque (Ex.P.1) in favour of the respondent/complainant for a sum of Rs.2 lakhs.

When the respondent/complainant asked him to repay the money after two months from the date of borrowal, the revision petitioner/accused asked him to present the cheque.

Accordingly, he presented the cheque for realization and vide endorsement dated 28.12.2004 (Ex.P.2).the cheque was returned with an endorsement ?Funds insufficient?.The respondent/complainant issued a statutory legal notice, dated 21.12.2004, for which, the revision petitioner/accused sent a reply under Ex.P.5, dated 03.1.2005, denying the allegations.

Since the revision petitioner/accused did not pay the amount as demanded in the statutory notice, the respondent/accused has filed the private complaint.

6.The trial Court, on taking cognizance of the offence, issued summons and on appearance, he was questioned and he denied the charge.

7.The respondent/complainant examined himself as P.W.1 and marked the documents Exs.P.1 to P.5.

8.The revision petitioner/accused was questioned under Section 313(i)(b) of Cr.P.C with regard to the incriminating circumstances made out in the evidence tendered by the respondent/complainant.

He denied it as false.

The revision petitioner/accused did not let in any oral evidence and not marked any document.

9.The trial Court, on consideration of oral and documentary evidence has found the revision petitioner/accused guilty and imposed the sentence as stated above

and the appeal preferred by him also ended in dismissal.

Hence, he has preferred this revision.

10.It is the forcible and vehement contention of the revision petitioner that on a particular date, the respondent/complainant barged into the house of the revision petitioner/accused and tried to outrage the modesty of his wife and taken a signed blank cheque, which has been subsequently filled up and utilized for the purpose of filing the private complaint.

11.It is the further submission of the revision petitioner that his daughter was about 15 years old and she is a minor and therefore, there was no occasion for him for arranging her marriage as it is against the law.

Both aspects have not been taken into consideration by the Courts below.

12.The lower appellate Court has recorded a fact that to show that his daughter was only aged 15 at the relevant point of time, the revision petitioner/accused has not marked any document.

Insofar as the taking up of the signed blank cheque and filling up the same for the purpose of lodging the private complaint, the trial court has recorded a fact that during the cross-examination of P.W.1, no question was asked by the accused with regard to the borrowal of Rs.5,000/-.

The trial Court has also recorded a fact that though there were earlier transactions between the revision petitioner / accused and the respondent / complainant, such defence has been put forth only to deny his liability and as such defence can't be believed.

It is also pertinent to point out at this juncture that the revision petitioner/accused did not dispute his signature in the impugned cheque marked as Ex.P.1.

Hence, the initial burden falls on the revision petitioner/accused to dislodge the presumption.

But, he has failed to do so.

13.In the considered opinion of this Court, the Courts below, on overall consideration of oral and documentary evidence, have rightly reached the conclusion to hold that the revision petitioner/accused is guilty of the commission of the offence under Section 138 of the Negotiable Instruments Act and this Court finds no error or any infirmity in the reasons arrived at by the courts below.

14.At this juncture, the learned counsel appearing for the revision petitioner submits that in stead of sentencing the revision petitioner, who is aged 50 years taking into consideration his family and attendant circumstances, sentence of fine and imprisonment may be converted in to compensation.

15.This Court, taking into consideration the said submission and other facts and circumstances, is of the view that the sentence alone requires modification.

16.In the result, this Criminal Revision Case is dismissed, confirming the conviction under Section 138 of the Negotiable Instruments Act, awarded by the trial Court, as confirmed by the lower appellate Court.

However, the sentence of imprisonment and fine with default sentence is modified and the revision petitioner/accused is directed to pay a sum of Rs.2 lakhs (Rupees two lakhs only) by way of compensation to the respondent/complainant and in default to undergo simple imprisonment of three months.

09.03.2015 Index:No Internet:Yes/ vs Note to the registry:The Registry is directed to communicate a copy of the order to the respondent also.

To 1.The Additional Sessions Judge & Fast Track Court No.1, Tuticorin 2.The District Munsif, Sathankulam M.SATHYANARAYANAN, J.

vs Order made in CRL.R.C.(MD)No.513 of 2008 09.03.2015

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