



Crl.R.C.No.1042 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

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CORAM:

**THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA**

**KURUP**

**Crl.RC.No.1042 of 2019**

G.Padmanaban

... Petitioner/Accused

Vs.

K.M.Periyasamy

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 & 401 Criminal Procedure Code, to set aside the judgment in C.A.No.25 of 2019 dated 31.07.2019 on the file of the Principal Sessions Judge, Erode, confirming the conviction and sentence passed in S.T.C.No.6 of 2014 dated 27.12.2018 on the file of the learned Judicial Magistrate, Fast Track Court-II, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.J.N.Naresh Kumar  
Legal Aid Counsel  
For Respondent : No representation

**ORDER**

This Criminal Revision Petition had been filed to set aside the judgment in C.A.No.25 of 2019 dated 31.07.2019 on the file of the Principal Sessions Judge, Erode, confirming the conviction and sentence passed in S.T.C.No.6 of 2014 dated 27.12.2018 on the file of the learned Judicial Magistrate, Fast Track Court-II, Erode.



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2. When the case came up for hearing on previous occasion, there was no representation for the Revision Petitioner. Therefore, this Court had addressed the Legal Aid Committee to nominate a Counsel to appear for the Revision Petitioner and the case was adjourned.

3. On 04.08.2023, the learned Counsel who was nominated by the Legal Aid Committee, sought further time, as he wanted to peruse the deposition of the witness before the trial Court and sought further time, and he also sought copies of the deposition of the witnesses before the trial Court for effectively submitting his arguments. This Court refused the request of the learned Counsel for the Revision Petitioner stating that in the revision case, this Court cannot appreciate evidence. The Revision Petition is filed only on technicalities of law regarding either the judgment of the trial Court or the Appellate Court. Therefore, the learned Counsel nominated by the Legal Aid Committee attached to this Court, was directed to proceed with the arguments on 10.08.2023, failing which, appropriate orders will be passed.

4. Today, 10.08.2023, when the case came up for hearing, the learned Counsel who was nominated by the Legal Aid Committee attached to this Court, submitted his arguments.

5. As per the submission of the learned Counsel for the Revision



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Petitioner, the Accused before the trial Court is the Revision Petitioner. The Complainant and Accused are not known to each other. The statutory notice issued by the Complainant was returned without serving on the Accused. Therefore, he was unable to reply to this statutory notice. Further, it is defence of the Accused before the trial Court that the Complainant does not have resources to extend the loan of Rs.3,00,000/- to the Accused. It is the submission of the learned Counsel for the Revision Petitioner that the Accused and friend of the Accused viz., Saravanan, were in the textile business. The Complainant was also in the textile business and 10 years before filing of the complaint, the Complainant suffered loss in textile business and he closed the textile business. Therefore, he does not have resources to extend the loan of Rs.3,00,000/-. It is his defence in the trial in S.T.C.No.6 of 2014 before the learned Judicial Magistrate, Fast Track Court-II, Erode, that the Complainant does not have the resources to extend loan of Rs.3,00,000/- to the Accused. The Accused had not at all received any loan from the Complainant. Earlier, the Accused had received loan from his friend Saravanan and had repaid it. At the time of availing loan, the Accused was alleged to have issued duly signed blank cheque to Saravanan. When he had also repaid the loan, those cheques have been taken up by the Complainant and filled up and based on such misuse of the Cheque, the Complainant had



filed the complaint in S.T.C.No.6 of 2014 before the learned Judicial Magistrate, Fast Track Court-II, Erode. In the cross examination of the Complainant-P.W.1 the defence of the Accused was put to him as suggestions and he had admitted in cross examination that he had sold textile business 10 years prior to filing of this Complaint. The Complainant as P.W-1 had clearly in his cross examination stated that he does not know the address of the Accused. Therefore, the learned Judicial Magistrate failed to appreciate the evidence available before him.

6. Based on the presumption available under Section 138 of the Negotiable Instrument Act the Accused was convicted and imposed compensation of Rs.3,00,000/-. The Accused who had suffered conviction and sentence of imprisonment, had filed Crl.A.No.25 of 2019 before the learned Principal Sessions Judge, Erode. The learned Principal Sessions Judge, Erode, had confirmed the judgment of the learned Judicial Magistrate, Fast Track Court-II, Erode, and dismissed the appeal. It is the contention of the learned Counsel for the Revision Petitioner/Accused that the trial Court as well as the Appellate Court failed to appreciate the evidence, particularly, in the cross examination of P.W.1 which is in favour of the Accused. Therefore, he seeks to set aside the judgment of conviction recorded by the learned



Judicial Magistrate, Fast Track Court-II, Erode and confirmed by the Learned Principal Sessions Judge, Erode in Crl.A.No.25 of 2019.

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7.The learned Counsel for the Revision Petitioner invited the attention of this Court to the observations of the learned Judicial Magistrate, Fast Track Court-II, Erode in Paragraph Nos.9 to 20 and Judgement of the learned Principal Sessions Judge, Erode, in Crl.A.No.25 of 2019 in Paragraph Nos.14 to 17. Therefore, it is the submission of the learned Counsel for the Revision Petitioner that the judgement of the learned Judicial Magistrate, Fast Track Court-II, Erode, in S.T.C.No.6 of 2014 is perverse and the judgment of the learned Principal Sessions Judge, Erode is also perverse and they are liable to be set aside.

8. On perusal of the Judgment of the learned trial Judge as well as the Appellate Judge, it is found that the Rulings cited on behalf of the Accused by the learned counsel for the Accused as well as before the Appellate Court, was considered by the learned trial Judge as well as by the learned Appellate Judge and they had rejected the Rulings cited by the learned Counsel for the Appellant stating that the defence of the Accused has to be proved. He had not taken steps to prove the defence, and the rebuttal



evidence is to be presumed by preponderance of probabilities. It was accepted by the learned trial Judge as well as by the learned Appellate Judge and the Accused did not go into the witness box or examine any witness from the materials available on record and in the evidence adduced by the prosecution witnesses and answers elicited from prosecution witness were enough to rebut the presumption and shift the burden of proving the guilt of Accused. There is sufficient evidence that the Accused had evaded the notice as well as the reply. Therefore, the Court had drawn adverse inference on the conduct of the Accused. Therefore, based on the defence of the Accused, he was convicted. This Court, as revision Court cannot reassess the evidence as an Appellate Court and already, the Appellate Court had reassessed, the evidence and arrived at the conclusion, confirming the finding of the guilt recorded by the learned Judicial Magistrate, Fast Track Court-II, Erode.

9. In the light of the judgment of the Appellate Court confirming the judgment of the trial Court on the basis of the appreciation of the evidence. This Revision lacks merit and is to be dismissed. Accordingly, this Criminal Revision Case is **dismissed**.

10. The learned Judicial Magistrate, Fast Track Court-II, Erode, is



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directed to secure the Accused by issuing warrant in continuation of the judgment of conviction and report compliance to this Court by return of e-mail.

11.Call on **11.09.2023**.

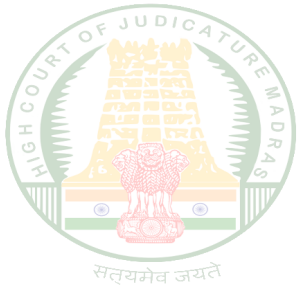
**10.08.2023**

vsn

**Note:Issue Order Copy on 10.08.2023**

To:

1. The Judicial Magistrate, Fast Track Court-II,  
Erode.
2. The Principal Sessions Judge,  
Erode.



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**SATHI KUMAR SUKUMARA KURUP, J.**

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