IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.6.2015

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Crl.R.C.No.1274 of 2014

S.S.Enterprises
rep. By its Proprietor,
J.Elangovan : Petitioner/Appellant/Accused

versus

T.C.Vilwanathan : Respondent/Respondent/Complainant

Criminal Revision filed against the order of Judicial Magistrate/ Fast Track Court, Vellore, in C.C.No.798/2011 on 4.2.2013 under Section 138 Negotiable Instruments Act, which was modified by the 1st Additional District and sessions Judge, Vellore, in C.A.No.16/2013 on 13.8.2014.

For petitioner : Mr.S.Swamidoss Manokaran
For respondent : Mr.E.Kannadasan

O R D E R

The petitioner has come forward with this criminal revision challenging his conviction and sentence imposed by the I Additional District and Sessions Judge, Vellore. The petitioner was convicted under Section 138 Negotiable Instruments Act and sentenced to pay a fine of Rs.7,65,000/-, in default to undergo simple imprisonment for six months. Out of the said Rs.7,65,000/-, Rs.7,60,000/- was directed to be paid as compensation to the respondent.

2. The prosecution case in a nutshell is as follows :-

> "To meet his business and domestic exigencies, the accused borrowed a sum of Rs.7,50,000/- from the complainant and executed a promissory note, agreeing to repay the amount with interest @ 24% p.a. Towards discharge of the said debt, the accused issued a cheque dated 2.11.2011 for a sum of Rs.7,50,000/-. When the said cheque was presented in Bank, it was returned for the reason "refer to drawer". Immediately, the complainant sent a legal notice dated 18.11.2011. Though the accused received the notice, he did not chose to send a reply or repay the amount. Hence the

accused was tried for offence under Section 138 Negotiable Instruments Act by the Judicial Magistrate, Fast Track Court, Vellore, who convicted the petitioner for offence under Section 138 NIA Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5000/-, in default to undergo Simple Imprisonment for further period of three months. On appeal, the sentence was modified as stated above."

3. The learned counsel for the petitioner assailed the order of the Courts below mainly on three grounds. The first ground raised by the petitioner is that the respondent does not have the wherewithal to pay such a huge sum. Secondly, it is alleged that the petitioner has given cheque dated 2.11.2011 but the petitioner has closed his Bank account way back in the year 2006. Therefore, it is not possible that the petitioner would have issued such an old cheque. Thirdly, the learned counsel submitted that the said cheque was actually given to one Ravikumar in the year 2003 as a guarantee cheque in respect of a sale agreement. Therefore, the theory put forward by the respondent/complainant is not probable and that the petitioner is entitled for acquittal.

4. Per contra, the learned counsel for the respondent submitted that the respondent is a man of means. The respondent had Rs.8,00,000/- in his Bank account. Though the respondent withdrew certain amount from the said sum, he had retained the cash and it is not as if he has spent the same. As regards the contention that the petitioner had given cheque in 2011 whereas he had closed the Bank account way back in the year 2006, it only shows his intention to cheat the respondent. Likewise, if really the petitioner had given the cheque to one Ravikumar, he should have examined the said Ravikumar to prove his case. Therefore, the learned counsel for the respondent submitted that the Courts below have analyzed the evidence in detail and come to a definite conclusion about the guilt of the accused. The learned counsel prayed that the conviction and sentence may be confirmed.

5. Heard both sides.

6. As regards the first contention that the respondent does not have the wherewithal to pay the amount, it is seen that the respondent had Rs.8,00,000/- in his Bank account. It is true that he has withdrawn a large portion of money from the deposit. It is very well possible that the complainant was having the money with him without spending it. Just because he withdrew money from his account that does not mean that he has spent the entire sum. Therefore, the ability of the respondent to lend a sum of Rs.7,50,000/- is well proved. As regards the contention that the petitioner would not have issued a cheque in 2011 when he has closed his account in the year 2006, the Courts below have analyzed this contention and come to a concrete conclusion that the very fact that the accused gave a cheque in 2011 knowing fully well that he has

closed his account in 2006, only proves his intention to cheat the complainant. The third contention raised by the petitioner is also not believable. If really, the petitioner has given the cheque to one Ravikumar, nothing prevented him from examining the said person to prove his case. It is also seen that the petitioner has not even chosen to give a reply to the statutory notice sent by the petitioner, which is fatal to his case.

7. For all the above reasons, the criminal revision fails and the order of the First Appellate Court is confirmed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

tar

To
1. The 1st Additional District and sessions,
   Vellore
2. The Judicial Magistrate,
   Fast track Court,
   Vellore.

+1 cc to Mr.S. Swamidoss Manokar, Advocate vides, sr.31342

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gj(co)
kra(27/07)