

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1207 of 2016

and

Crl.M.P.No.10860 of 2016

D.Venkatasubramaniam  
S/o.K.V.Duraisamy

.. Petitioner

Vs.

P.Selvaraj  
S/o.C.Perumal

.. Respondent

Criminal Revision filed under Sections 397 and 401 Cr.P.C. against the judgment of learned I Additional District and Sessions Judge, Erode, passed in C.A.No.128 of 2015 on 18.02.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court I, Erode, passed in S.T.C.No.185 of 2014 on 16.09.2015.

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|----------------|---|------------------------------------|
| For Petitioner | : | Mr.A.Mohamed Ismail                |
| For Respondent | : | Mr.V.Balamurugan,<br>No appearance |

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**ORDER**

This revision arises against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 6 months S.I. and fine of Rs.5,000/- i/d 15 days S.I.

2. Respondent/complainant moved a prosecution informing that petitioner/accused borrowed a sum of Rs.5,00,000/- from him and towards repayment thereof, cheques bearing No.105179 dated 19.12.2013 drawn on Vijaya Bank, Erode, stood issued to him, which upon presentation was returned unpaid for the reason “insufficient funds”. Respondent/ complainant caused statutory notice and following the procedure envisaged under Section 138 of the Negotiable Instruments Act, a complaint had been filed.

3. Before the trial Court, respondent/complainant examined himself and marked seven exhibits. Petitioner/accused examined himself, however, no documents were marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 16.09.2015, convicted the petitioner and sentenced him to 6 months S.I. and fine of Rs.5,000/- i/d 15 days S.I. The appeal preferred by petitioner in C.A.No.128 of 2015 on the file of learned I Additional Sessions Judge, Erode, came to be dismissed under judgment dated 18.02.2016. Hence, this revision.

5. Heard learned counsel for petitioner. There is no representation for respondent.

6. In convicting the petitioner, Courts below have found that while it was the case of complainant that the accused had borrowed a sum of Rs.5,00,000/- and towards repayment thereof issued a cheque dated 19.11.2013, which, on presentation, returned unpaid, it was the case of accused that he had borrowed a sum of Rs.1,50,000/- from the complainant and issued three cheques bearing Nos.105178, 105179 and 105180 towards security and the complainant failed to return the same upon repayment of the borrowed amount and misused the same towards foisting a false case against him. However, in support of his contention, no oral or documentary evidence has been produced. The accused has also deposed in the chief-examination that he had lost the counter foils of the above said three cheques and admitted that he has not produced any document to show that he has repaid Rs.1,50,000/- to the complainant. Besides the above, the accused has also admitted that he did not prefer any complaint against the complainant for misusing the cheque which has been given towards security and he has not instructed 'stop payment' for the said cheque. Further, the accused has refused to accept the notice caused by complainant and the same was returned 'unclaimed', which fact has also been admitted by him. Courts below have also found that a perusal of Ex.P7, income tax returns filed by complainant, revealed that the name of accused has been shown under the head loan debtors and the amount was shown as Rs.5,00,000/-. On the above finding, Courts below have held that the complainant has proved his case and

the accused has failed to rebut the presumption u/s.139 of the Negotiable Instruments Act and accordingly, convicted the accused. This Court finds no reason to interfere with the judgments under challenge.

7. Learned counsel for petitioner submits that the petitioner/accused has already been in custody for 15 days.

8. Considering the facts and circumstances of the case, this Court, while confirming the finding of conviction arrived at by Courts below, modifies the sentence of 6 months S.I. to one of 4 months S.I. Fine imposed by trial Court and the default sentence thereon is confirmed.

The Criminal Revision Case is disposed of with the above modification. Connected miscellaneous petition is closed.

**02.12.2016**

Index: Yes/No  
Internet: Yes  
gm

To

1.The I Additional District and Sessions Judge,  
Erode.

2.The Judicial Magistrate,  
Fast Track Court I,  
Erode.

C.T. SELVAM, J

**Crl.R.C.No.1207 of 2016**

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