

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2017

CORAM:

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

CrI.R.C.No.103 of 2017
and
CrI.M.P.Nos.1176 and 1178 of 2017

M.Kutharath Ali
S/o.S.K.Mahaboob Saibhu .. Petitioner/Accused

vs.

1. M.Balasubramaniam
S/o.K.S.Manickam

2. The State by
Public Prosecutor,
Erode District.

.. Respondents/Complainant/2nd
Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned I Additional Sessions Judge, Erode, passed in C.A.No.127 of 2015 on 30.11.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court I, Erode, passed in S.T.C.No.367 of 2014 on 14.09.2015.

For Petitioner: Mr.I.C.Vasudevan

For Respondents: Mr.V.Regunathan [R1]

Mr.V.Arul,
Additional Public Prosecutor [R2]

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O R D E R

This Court has reserved orders in this revision on 28.02.2017. Thereafter, the matter has been listed on two occasions towards reporting settlement. Today, the matter is listed under the caption 'for orders'.

2. 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.

3. First respondent moved a prosecution informing that the petitioner borrowed a sum of Rs.3,00,000/- from the complainant and a cheque bearing No.000007 dated 12.06.2014 drawn on HDFC Bank, Erode Branch, stood issued to him by petitioner towards repayment of borrowing, 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.

4. Before the trial Court, respondent examined himself and marked ten exhibits. Petitioner was examined on behalf of the defence and no exhibits were marked.

5. On appreciation of materials before it, trial Court, under judgment dated 14.09.2015, convicted petitioner and sentenced him to 6 months S.I. and fine of Rs.5,000/- i/d 15 days S.I. There against, petitioner preferred C.A.No.127 of 2015 on the file of learned I Additional Sessions Judge, Erode. Appellate Court, under judgment dated 30.11.2016, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioner, learned counsel for first respondent and learned Government Advocate [Crl.side] for second respondent. Perused the materials on record.

7. In convicting the petitioner, Courts below have found that though in Ex.P7, reply notice, petitioner/accused has stated that the cheque was placed in the hands of first respondent/complainant through some illegal means, he has not established such contention through probable evidence. In chief examination, petitioner/accused deposed of having given the cheque to one Basheer towards enabling him to use the same as security to get loan from the complainant and the same was misused by the complainant. To substantiate such contention, petitioner has not examined the said Basheer. Once the issuance of cheque and the signature therein was not disputed, then it is for petitioner/accused to rebut the presumption u/s.139 of the Negotiable Instruments Act, which he has failed to do. On the other hand, first respondent/complainant has proved his case through Exs.P1 to P10 and the cheque issued by petitioner/accused was also dishonoured for the reason 'insufficient funds'. On the above reasoning and for other reasons, Courts below arrived at a finding of conviction. This Court finds no error in the judgments under challenge.

The Criminal Revision Case shall stand dismissed. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gm

To

1. The I Additional Sessions Judge,
Erode.
- 1a. -Do- Thro The Principal Sessions Judge
Erode.
2. The Judicial Magistrate,
Fast Track Court I,
Erode.
3. The Chief Judicial Magistrate
Erode.
4. The Public Prosecutor,
Erode District.
5. The Public Prosecutor
High Court, Madras

+1 CC to Mr.I.C.Vasudevan, Advocate sr 48183
+1 CC to Mr.V.Regunathan, Advocate sr 48580

SP (29/07/2017)

Crl.R.C.No.103 of 2017

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