

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :01.09.2017

PRONOUNCED ON :05.12.2017

CRL.RC. No.1160 of 2011

Jaganathan

.. Petitioner

..Vs..

1.V.Sreenivasan
2.State rep.by
Public Prosecutor
Erode

.. Respondent

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to set aside the conviction imposed in the judgment dated 25.05.2011 made in C.A.No.7 of 2011 on the file of the Additional District/Fast Track Court No.I, Erode confirming the sentence and conviction imposed in judgment dated 06.12.2010 made in C.C.No.368 of 2009 on the file of the Judicial Magistrate No.I, Erode.

For Petitioner

:Mr.R.Marudhachalamurthy

For R1

:Mr.D.Balachandran

For R2

:Mr.B.Ramesh Babu,
Govt.Advocate (Crl.side)

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to set aside the conviction imposed in the judgment dated 25.05.2011 made in C.A.No.7 of 2011 on the file of the Additional District/Fast

Track Court No.I, Erode confirming the sentence and conviction imposed in judgment dated 06.12.2010 made in C.C.No.368 of 2009 on the file of the Judicial Magistrate No.I, Erode.

2. The accused is the revision petitioner.

3. The revision petitioner has filed against order of conviction against the order passed in Criminal Appeal No. 7/11, on the file of learned Additional District Judge No.I, Erode, wherein the conviction and the sentence passed in C.C.No.368 of 2009, dated 6.12.2010, has been confirmed is being challenged by the convict.

4. The learned counsel for the revision petitioner has contended that both the Courts below have not properly understood the scope of the presumption under the 118 of the Indian Evidence Act and wrongly concluded that there was a pre-existing debt in respect of the cheque-in-issue and have wrongly concluded that the cheque is supported by consideration and further contended that the suggestive case of the defendants has not been properly analyzed and hence, seeks to set aside the order of conviction and sentence.

5. The learned counsel for the respondent/private complainant could contended that for the amount of Rs.75,000/- borrowed by the revision petitioner herein for his domestic expenses on 16.12.2008, he had issued

cheque on 16.01.2009 and when presented for realization the same was returned as dishonoured and after observing the formalities and statutory requirements, he has preferred the private complaint under Section 138 of Negotiable Instruments Act and he has also let in the evidence to raise the presumption in his favour and both the Courts have accordingly held that the respondent herein is entitled for presumption and also held that the revision petitioner herein has not rebutted the same and consequently, laid the conviction and sentence and made submission in support of the judgment of the Courts below.

6. Points for determination of this revision is that:-

(i) Whether the order of conviction passed by the Courts below is sustainable in law?

(ii) Whether the sentence awarded is excessive?

7. The respondent herein filed complaint before the Judicial Magistrate No.I, Erode, alleging that for the hand loan received on 16.12.2008, the accused/revision petitioner has given Ex.P1, cheque, dated 16.01.2009 for a sum of Rs.75,000/- and same was returned on deposit for insufficient funds under Ex.P2, dated 19.02.2009 and Ex.P3, dated 20.02.2009 and he has issued a statutory notice as required under the Ex.P4, dated 23.02.2009. While, Ex.P5, dated 24.02.2009 is a postal receipt and Ex.P6, dated 25.02.2009 is an acknowledgment card. So is the evidence as P.W.1.

8. Both the Courts below have concurrently held that based upon the oral evidence of P.W.1, V.Sreenivasan, the complainant herein coupled with documentary evidence of Exs.P1 to Ex.P6 come to the conclusion that the respondent/petitioner is entitled for presumption under Section 118 of the Indian Evidence Act and accordingly, held that the cheque-in-issue was issued for pre-existing debt and the same was bounced on deposit and hence, have held that the revision petitioner has committed the offence under Section 138 of the Negotiable Instruments Act.

9. Assailing the said finding of the Court below, the learned counsel for the petitioner has submitted that the suggestive case of the revision petitioner is that, he had a business transaction with one Mr.Selvam in connection with the chit fund, wherein, he had deposited 3 cheques and subsequently, he had returned the entire amount due to the said Selvam. However, the Selvam has evaded to return the 3 cheques issued by the revision petitioner on one ground or other and subsequently the cheque was given to the petitioner herein has been filled up and presented a false case against him. In the cross examination of the P.W.1, he had categorically stated that for the amount given by the revision petitioner for which, the cheque-in- issue has given as a security and as per the instructions, he had deposited a cheque on 14.01.2009.

10. The learned counsel has relied upon a snap answer in the cross examination that the P.W.1 is in possession of two more cheques issued by the respondent herein and accordingly, it appears that he has also filed petition under Section 91 of the Cr.P.C to produce the same. However the same was not furnished by the respondent herein. Based upon the above factual position, the learned counsel for the petitioner could submit that an adverse inference has to be drawn against the petitioner.

11. On consideration of the said submission, it remains to be stated that for the Ex.P4, legal notice dated 23.02.2009, the revision petitioner herein has not given any reply. In the decision reported in 2010 (4) CTC 116 (Rangappa Vs.Srimohan), Supreme Court, wherein the Apex Court has held that the very same fact that the accused had failed to the reply the statutory notice under Section 138 of the Negotiable Instruments Act leads to the inference there was merit in complaints version. Admittedly, the revision petitioner has not given any reply and hence, the facts and circumstances of this case squarely false within the ratio laid down by the Hon'ble Supreme Court in the above referred decision.

12. The next contention of the learned counsel for the revision petitioner is that the P.W.1 in the cross examination has admitted possession of two more cheques, apart from the cheque-in-issue, by the revision petitioner herein and hence, it deem to have rebutted the presumption in

favour of the petitioner before the trial Court, this court is unable to appreciate and affix seal of the approval to the said contention of the learned counsel for the petitioner on more than one ground. First and foremost, the suggestive case that was projected by the revision petitioner before the trial Court is that , he had only borrowed amount from Selvam and not borrowed the amount from the respondent herein. Though, a snap answer has been obtained from the PW1 as narrated above nothing was elicited in the cross examination as to the existence of the cheque issued by him in respect of the loan availed by him from the Selvam. Though he had chosen to give a petition to examine the said Selvam as defence side witness, for the reasons best known, he has not examined either the Selvam or his wife in respect of the suggestive case projected by the revision petitioner herein, furthermore, no independent witnesses have been examined before the trial Court and nothing is elicited in the cross examination, with regard to the alleged loan transaction said to have been had by revision petitioner with the said Selvam. Therefore, the revision petitioner/accused have failed to probablize the suggestive case projected by him. Now having filed in his attempt to probablize his suggestive case wanted to rely upon the snap answer given by the P.W.1 in the cross examination and which is no avail.

13. Be that as it may, even with regard to the snap answer, this Court is of the considered view that the presumption that was held in favour of the respondent herein is not rebutted by the above said fact. So long as

the accused/revision petitioner has not adduced any evidence to probablize the suggestive case and in the absence of any positive material in connection with the cheque-in-issue, both the Courts below have correctly come to the conclusion that the respondent/petitioner is entitled for presumption under Section 118 of the Indian Evidence Act is well found and well merited does not warrant for any interference by this Court and consequently, the respondent/petitioner is entitled for presumption and the revision petitioner/accused having failed to probablize his suggestive case and having failed to let in any evident to rebut the presumption in favour of the petitioner before the trial Court. Both the Courts below are correctly laid the conviction and the same cannot interfered with and this point is answered accordingly.

14. Considering the quantum of the amount involved in the cheque, both the Courts below have awarded a sentence of 1 year Rigorous Imprisonment and find of Rs.5,000/- with default clause which, I am of the considered view that the same in consumerate with the charge that has been proved and hence, the sentence cannot be termed as an excessive and accordingly, this point is also answered in negation and in fine, the conviction and sentence passed by both the Courts below is sustainable in law and the sentence is in proportionate to the charges that are proved and revision is devoid of merits is liable to be rejected.

15. In the result, this Criminal Revision Petition is dismissed.

05.12.2017

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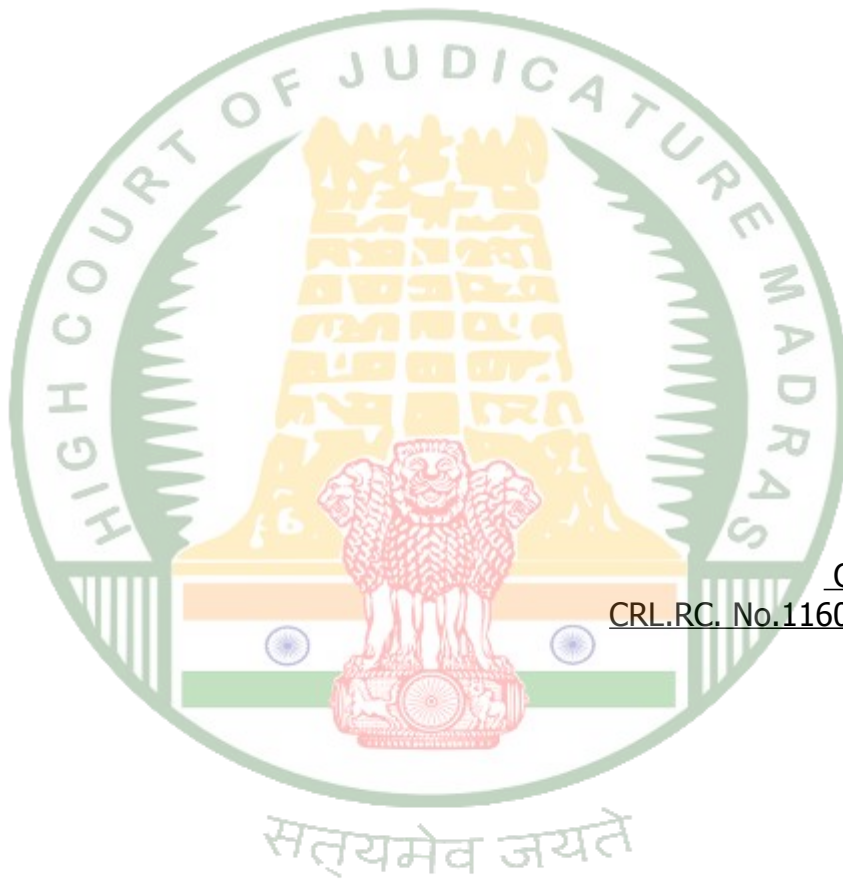
To

- 1.The Additional District/Fast Track Court No.I, Erode
- 2.The Judicial Magistrate No.I, Erode.
- 3.The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,
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