

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM:

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

CrI.R.C.No.1192 of 2010

P.Ragothaman ... Petitioner

vs.

A.B.Govardhan .. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Additional District and Sessions Judge, Fast Track Court II, Chennai, passed in C.A.No.50 of 2010 on 11.11.2010 confirming the judgment of learned Judicial Magistrate V, Chennai, passed in C.C.No.7806 of 2001 on 09.02.2010.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.B.R.Shankaralingam

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ORDER

This revision arises against two concurrent judgments of Courts below convicting petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to 1 year S.I. and fine of Rs.5,000/- i/d 3 months S.I.

2. Respondent/complainant moved a prosecution informing that petitioner/accused borrowed a sum of Rs.13,20,000/- and a cheque bearing No.423796 dated 01.05.2001 in a sum of Rs.13,20,000/- drawn on Canara Bank, Anna Nagar Branch, stood issued to him by petitioner/accused towards repayment of borrowing, which upon presentation was returned unpaid for the reason 'insufficient funds'. Respondent/complainant following the procedure envisaged u/s.138 of the Negotiable Instruments Act, preferred a complaint. The complaint was taken on file in C.C.No.7806 of 2001 on the file of learned Judicial Magistrate V, Chennai.

3. Before trial Court, respondent examined 2 witnesses and marked 16 exhibits. On the side of defence, 5 witnesses were examined and 14 exhibits were marked. On appreciation of materials before it, trial Court rendered a finding of conviction and sentenced petitioner/accused to 1 year S.I. and fine of Rs.5,000/- i/d 3 months S.I. There against, petitioner/accused preferred C.A.No.50 of 2010 on the file of learned Additional District and Sessions Judge, Fast Track Court II, Chennai, which came to be dismissed under judgment dated 11.11.2010. Hence, this revision.

4. Heard learned counsel for petitioner and learned counsel for

respondent as also perused materials on record.

5. The present is a case where a series of transactions between parties is admitted and parties again admittedly are agitating their rights before civil forms. Courts below have failed to appreciate that in the circumstances, respondent ought to have been required to prove his debt and failure of respondent, who admittedly is a financier, to do so ought to have been put against him. Notice caused by petitioner dated 16.04.2001 has been marked as Ex.D1. Therein, dispute between parties over loan obtained by petitioner, mortgages effected towards securing the same as also non-compliance with terms of agreement for sale entered into by petitioner with respondent has been spoken of. Most importantly, petitioner has alleged that respondent held 14 signed cheques of his. Respondent, in cross-examination, has sought to gloss over the receipt of such notice by contending that he was not sure if the acknowledgment card bearing his signature dated 18.04.2001 was in acknowledgment of his receipt of Ex.D1, notice, dated 16.04.2001. Courts below have failed to see that in such circumstances, there hardly was likelihood of petitioner issuing a cheque on 01.05.2001 in favour of respondent. For the aforesaid reasons, it would be appropriate to allow this revision leaving it open to parties to agitate their rights before civil forum.

The Criminal Revision Case shall stand allowed. The judgment of learned

Additional District and Sessions Judge, Fast Track Court II, Chennai, passed in

C.T. SELVAM, J

gm

C.A.No.50 of 2010 on 11.11.2010 confirming the judgment of learned Judicial Magistrate V, Chennai, passed in C.C.No.7806 of 2001 on 09.02.2010, shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

02.08.2017

Index:yes/no

Internet:yes/no

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To

1.The Additional District and Sessions Judge,
Fast Track Court II,
Chennai.

2.The Judicial Magistrate V,
Chennai.

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