

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

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

Crl.R.C.No.1080 of 2016

S.Subbaiah
S/o.P.Shanmugam

.. Petitioner

vs.

A.Karthikeyan
S/o.Annamalai

.. Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional Sessions Judge, Erode, passed in C.A.No.34 of 2015 on 13.08.2016 confirming the judgment of learned Judicial Magistrate III, Erode, passed in C.C.No.225 of 2008 on 20.03.2015.

For Petitioner : Mr.B.Nedunchezhiyan

ORDER

This revision arises against the judgment of learned II Additional Sessions Judge, Erode, passed in C.A.No.34 of 2015 on 13.08.2016 confirming the judgment of learned Judicial Magistrate III, Erode, passed in C.C.No.225 of 2008 on 20.03.2015.

2. Respondent/complainant moved a prosecution informing that one Venkatachalam, on 10.10.2007, has given a cheque dated 23.01.2008 in a sum of Rs.11,95,000/- drawn on Corporation Bank, Erode Branch, to him stating that the cheque was given by the accused, it would be honoured on presentation and received the cheque amount. Upon presentation, the cheque 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 examined himself and marked eight exhibits. Two witnesses were marked on behalf of the defence and one exhibit was marked.

4. On appreciation of materials before it, trial Court, under judgment dated 20.03.2015, convicted petitioner and sentenced him to 1 year S.I. and fine of Rs.5,000/- i/d 2 months S.I. There against, petitioner preferred C.A.No.34 of 2015 on the file of learned II Additional Sessions Judge, Erode. Appellate Court, under judgment dated 13.08.2016, dismissed the appeal. There against, the present revision has been filed.

5. There is no representation for petitioner. Perused the materials on record.

6. In arriving at a finding of conviction, Courts below have found that though it has been contended by petitioner/accused that particulars in the cheque has been filled without his knowledge and the same has been misused, he has not disputed the signature in the cheque. In Ex.P5, reply notice, petitioner/accused has stated that he has issued the subject cheque to Venkatachalam, Manager, but he has not mentioned when it was given. In the reply notice, petitioner/accused has also stated that the cheque was stolen by somebody. However, the petitioner neither instructed stop payment nor preferred any complaint against the said Venkatachalam, who lost the cheque. While it was the contention of accused that the said Venkatachalam left the petitioner's service in the year 2008, it was the contention of

Venkatachalam/DW-1 that he left the services of petitioner/accused in the year 2006. 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.

The Criminal Revision Case is dismissed.

03.02.2017

Index:yes/no
Internet:yes/no
gm

To

- 1.The II Additional Sessions Judge,
Erode.
- 2.The Judicial Magistrate III,
Erode.

C.T. SELVAM, J
gm

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