

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

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

Crl.R.C.Nos.1186 and 1187 of 2016 and  
Crl.M.P.Nos.10569, 10585, 12407 and 12408 of 2016

R.Jagadesan .. Petitioner/Appellant/  
Accused in both cases

Vs.

1.P.Karthikeyan  
Power of Attorney Holder of  
K.Subramani .. 1<sup>st</sup> Respondent/1st Respondent  
in Crl.RC. No.1186/2016

1.P.Karthikeyan  
Power of Attorney Holder  
of K.Manoharan .. 1<sup>st</sup> Respondent/1st Respondent  
in Crl.RC. No.1187/2016

2.The State rep. by  
Additional Public Prosecutor,  
Coimbatore .. 2<sup>nd</sup> respondent/2nd Respondent  
in both cases

Criminal Revision Cases filed under Sections 397 and 401  
Cr.P.C. against the order of learned Judicial Magistrate, Fast  
Track Court at Magistrate Level-I at Coimbatore, passed in  
C.C.Nos.340 & 339 of 2011 dated 23.04.2014 confirmed by the  
learned III Additional District and Sessions Judge, Coimbatore  
in Crl.Appeal No.61 & 60 of 2014 on 22.03.2016.

For Petitioner in  
both cases: Mr.K.Sivakumar

For Respondents : Mr.R.Ganesh Babu  
for R1  
Mr.M.Mohamed Riyaz  
Government Advocate for R2

## O R D E R

These revisions arise against two concurrent judgments of Courts below convicting the petitioner for offence u/s.138 of Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment of one year and imposed to pay fine of Rs.5,000/- i/d. 3 months S.I.

2.The case of the prosecution is that the accused borrowed a sum of Rs.15 lakhs from the complainant for his business purposes on 15.01.2010 by executing a pro-note and agreed to pay an interest @ 12 % per annum. On demand by the complainant, the accused issued a cheque bearing No.240678 drawn on Central Bank of India, Cross cut road, Coimbatore for a sum of Rs.15 lakhs on 28.01.2011 towards the discharge of the loan availed by him. When the said cheque was presented by the complainant on 26.02.2011, the same was returned with an endorsement "Today's opening balance insufficient". A legal notice was issued by the complainant to the accused on 04.03.2011 demanding the payment of the cheque amount but the same was returned with an endorsement "refused by the party". Claiming that the accused neither paid the cheque amount nor sent any reply within the prescribed time, the complainant had lodged a private complaint u/s.200 Cr.P.C. through his Power Agent.

3. Before the Trial Court, the Power Agent of the complainant examined himself as PW1 by filing proof affidavit reiterating the contentions made in the complaint besides marking Ex.P1 to Ex.P6 viz. the cheque, the return memo, legal notice dated 04.03.2011, the returned postal covers (2 Nos.), original special Power of Attorney dated 01.04.2011 and pro-note dated 22.01.2010. On the side of accused, none were examined and nor were any exhibits marked. The trial Court, under judgment dated 23.04.2014, convicted the petitioner for offence u/s.138 of NI Act and sentenced him to undergo 1 year R.I. and to pay a fine of Rs.5,000/- i/d 3 months S.I. The appeal preferred by petitioner in C.A.No.60 of 2014 on the file of learned III Additional District and Sessions Judge, Coimbatore, came to be dismissed under judgment dated 22.03.2016. Hence, this revision.

4.Heard Mr.K.Sivakumar, learned counsel for petitioner and Mr.R.Ganesh Babu, learned counsel for first respondent and Mr.M.Mohamed Riyaz, learned Government Advocate [Crl.side] for R2.

5.Learned counsel for petitioner submits that complainants have not shown any proof of the petitioner being in possession of a huge sum of Rs.15,00,000/-.

6.In rendering a finding of conviction, confirmed by the Appellate Court, the Trial Court has specifically found that the petitioner had not rebutted the initial presumption against him under Section 139 of N.I. Act. Learned counsel for petitioner pointed out that one Karthikeyan has been examined as P.W.1 and such witness had deposed that both the two complainants were not individually engaged in the money lending business and that they were not conducting any finance business. In both cases, statutory notice has been returned 'unclaimed'. Thus, no reply notice putting forth the contentions now raised before this Court viz; monies were borrowed from third parties and cheques and promissory note had been issued and that after clearance of the dues to the third parties, the cheques had not been put to misuse through the complainants. Learned counsel submits that petitioner had preferred a complaint to police regards the wrong doing alleged. The petitioner neither examined himself as witness nor has placed any document in support of his contentions.

7.In the above said circumstances, this Court is of the view that the Trial Court is right in holding that the accused failed to rebut the presumption under Section 138 of NI Act and hence, the findings of conviction by both Courts below hold good. In the circumstances, this Court finds no reason to interfere with the order under challenge.

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

Sd/-  
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

vga

To

1.The III Additional District and Sessions Judge,  
Coimbatore

2.The Judicial Magistrate,  
Fast Track Court at Magistrate Level-I,  
Coimbatore.

+1cc to Mr.R.Ganesh Babu,Advocate sr.1073

+2cc to Mr.K.Sivakumar,Advocate sr.1496

Cr1.R.C.Nos.1186 and 1187 of 2016

ss (21/6/2017)