

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2017

CORAM:

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

Crl.R.C.No.1263 of 2016

and

Crl.M.P.Nos.11352 and 11353 of 2016

N.Somasundaram

S/o.Nagarajan

...Petitioner/Accused

vs.

M.Navaneethakrishnan

represented by his Power Agent,

V.Mahadevan

...Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of District Court II, Kancheepuram, passed in C.A.No.27 of 2015 on 23.09.2016 confirming the judgment of Judicial Magistrate I, Kancheepuram, passed in S.T.C.No.484 of 2013 on 04.08.2015.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.K.M.Balaji

O R D E R

This Court has reserved orders in this revision on 30.11.2016. 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 to pay compensation of Rs.1,11,000/- to the complainant within 1 month i/d 3 months S.I.

3. Respondent, Power Agent of the complainant, moved a prosecution informing that the petitioner borrowed a sum of Rs.1,00,000/- from the complainant and a cheque bearing No.908467 dated 12.06.2013 drawn on Indian Overseas Bank, Gandhi Road, 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 nine exhibits. Two witnesses were examined on behalf of the defence and one exhibit was marked.

5. On appreciation of materials before it, trial Court, under judgment dated 04.08.2015, convicted petitioner and sentenced him to 6 months S.I. and to pay compensation of Rs.1,11,000/- to the complainant within 1 month i/d 3 months S.I. There against, petitioner preferred C.A.No.27 of 2015 on the file of learned District Judge, District Court II, Kancheepuram. Appellate Court, under judgment dated 23.09.2016, dismissed the appeal. There against, the present revision has been filed.

6. Heard learned counsel for petitioner and learned counsel for respondent. Perused the materials on record.

7. In convicting the petitioner, Courts below have found as follows:

(i)petitioner/accused himself admitted the signatures found in Exs.P2, P3, promissory notes and Ex.P4, cheque and borrowal of money. The contention of petitioner/accused that the cheque issued towards security purpose has been misused by respondent/complainant has been rejected on the reasoning that the evidence of DW-1, Bank Manager, was to the effect that the cheque in dispute was issued in the year 2009 and thereafter, they have not issued such kind of cheques, but, it is open to customers to use the cheque at any point of time. Therefore, it could not concluded that the petitioner/accused has given the cheque prior to the transaction.

(ii)From the evidence of DW-2, it was clear that the accused borrowed Rs.1,00,000/- from the complainant and issued Exs.P2 and P3, promissory notes and Ex.P4, cheque.

(iii)Though it was the contention of petitioner/accused that he repaid the entire amount to the complainant, no document has been produced to substantiate such contention. Further, petitioner/accused has not taken any steps to take back the promissory notes and cheque.

On the above reasoning and for some 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The District Judge,
District Court II,
Kancheepuram.
- 2.The Judicial Magistrate I,
Kancheepuram.
- 3.-do- Thro, The Chief Judicial Magistrate,
Kancheepuram.

+lcc to Mr.Prabakaran, Advocate, S.R.No.7152

KK(CO)
RS(01/03/2017)

Crl.R.C.No.1263 of 2016

सत्यमेव जयते

WEB COPY