

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.1395 of 2016

and

Crl.M.P.Nos.12215 and 12213 of 2016

M.Chidambaram

S/o.R.Mani

... Petitioner/Accused

vs.

1.T.Jeyaprakash

S/o.Thangaraj

2.The State represented by

Public Prosecutor,

Erode.

.. Respondents/Defacto
Complainant & Complainant

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the judgment of learned II Additional District and Sessions Judge, Erode, passed in C.A.No.146 of 2015 on 07.09.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court I, Erode, passed in S.T.C.No.301 of 2014 on 26.10.2015.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : No appearance [R1]

Mr.M.Mohammed Riyaz,

Government Advocate[Crl.side][R2]

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O R D E R

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 fine of Rs.5,000/- i/d 15 days S.I.

2. First respondent/complainant moved a prosecution informing that petitioner borrowed a sum of Rs.9,00,000/- from him and a cheque bearing No.058800 dated 19.02.2014 drawn on

HDFC Bank, Erode, stood issued to him by petitioner towards repayment of borrowing, which upon presentation was returned unpaid for the reason "insufficient funds". First 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, first respondent examined himself and marked nine exhibits. Two witnesses were examined on behalf of the defence and three exhibits were marked.

4. On appreciation of materials before it, trial Court, under judgment dated 26.10.2015, convicted petitioner and sentenced him to 6 months S.I. and fine of Rs.5,000/- i/d 15 days S.I. There against, petitioner preferred C.A.No.146 of 2015 on the file of learned II Additional District and Sessions Judge, Erode. Appellate Court, under judgment dated 07.09.2016, dismissed the appeal. There against, the present revision has been filed.

5. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for second respondent. There is no representation for first respondent.

6. Taking this Court through the typed set of papers, learned counsel for petitioner submits that towards discharge of loan of Rs.9,00,000/- borrowed from first respondent, petitioner's father had executed a sale deed in favour of the father of first respondent and both petitioner and first respondent were witnesses to such document which had been marked as Ex.D3 before the trial Court. Learned counsel submits that the respondent had misused the cheque in respect of earlier loan transaction in foisting a false case against the petitioner. Learned counsel also submitted that the first respondent alleges a borrowing by petitioner on 19.01.2014 and issue of cheque of date 19.02.2014. The sale deed, Ex.D3 is of date 19.11.2013.

7. The contention of respondent that exactly after two months of such sale deed petitioner borrowed a sum of Rs.9,00,000/- rendered doubtful his case. Petitioner had informed his contentions even in the reply notice. This Court is of the view that in the aforesaid circumstances, Courts below ought to have required the respondent/complainant to prove the transaction as the initial presumption u/s.139 of the Negotiable Instruments Act in his favour stands rebutted. The respondent has not proved the loan transaction.

The Criminal Revision Case shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Erode, passed in C.A.No.146 of 2015 on 07.09.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court I,

Erode, passed in S.T.C.No.301 of 2014 on 26.10.2015, shall stand set aside. Petitioner is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled. Connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-III)

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Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate,
Fast Track Court I,
Erode.
3. The Public Prosecutor,
Erode.

+1 CC to M/s. I.C. Vasudevan, Advocate sr 6915

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