

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

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

Crl.R.C.No.1443 of 2016
and
Crl.M.P.Nos.12531 and 12578 of 2016

T.Kirubasankar
S/o.Thiruvenkadam

.. Petitioner

vs.

1.M.Sampathkumar
S/o.Marimuthu

2.The State by
Public Prosecutor,
Erode District.

.. Respondents

Criminal Revision Case 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.48 of 2016 on 22.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court II, Erode, passed in S.T.C.No.92 of 2013 on 16.02.2016.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : No appearance [R1]
Mr.M.Mohammed Riyaz,
Government Advocate [Crl.side] [R2]

ORDER

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 1 month S.I. and fine of Rs.5,000/- i/d 1 month S.I.

2. First respondent moved a prosecution informing that the petitioner borrowed a sum of Rs.3,60,000/- from him and a cheque bearing No.145465 dated 20.10.2012 drawn on State Bank of India, 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, respondent examined himself and marked six exhibits. Two witnesses were examined on behalf of the defence and five exhibits were marked.

4. On appreciation of materials before it, trial Court, under judgment dated 16.02.2016, convicted petitioner and sentenced him to 1 month S.I. and fine of Rs.5,000/- i/d 1 month S.I. There against, petitioner preferred

C.A.No.48 of 2016 on the file of learned II Additional District and Sessions Judge, Erode. Appellate Court, under judgment dated 22.08.2016, 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 appearance for first respondent. Perused the materials on record.

6. This Court accepts the submission of learned counsel for petitioner that in circumstance where the first respondent has admitted to his being a coolie, that the cheque giving rise to the action was issued in blank probabalises the contention of petitioner that the cheque was issued not to the complainant but to one Chinnathambi, who admittedly was the brother-in-law of the complainant (sister's husband) and whose occupation was recovery of loans. In the afore stated circumstances, Courts below ought to have found that the petitioner has rebutted the initial presumption against him u/s.139 of the Negotiable Instruments Act and required the complainant to prove his debt, which he has failed to do.

The Criminal Revision Case shall stand allowed. The judgment of learned II Additional District and Sessions Judge, Erode, passed in C.A.No.48 of 2016 on

22.08.2016 confirming the judgment of learned Judicial Magistrate, Fast Track Court II, Erode, passed in S.T.C.No.92 of 2013 on 16.02.2016, 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.

23.02.2017

Index:yes/no
Internet:yes/no
gm

To

1.The II Additional District and Sessions Judge,
Erode.

2.The Judicial Magistrate,
Fast Track Court II,
Erode.

C.T. SELVAM, J

gm

Crl.R.C.No.1443 of 2016

23.02.2017

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