IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

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

Crl.R.C.No.6 of 2018
and
Crl.M.P.No.31 of 2018

K.P.Muthukumar
.. Petitioner/Appellant/Complainant

Vs.

G.Prema .. Respondent/Respondent/Accused

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment dated 15.11.2017 passed in C.A.No.246/2017 on the file of Principal Sessions Court, Erode, confirming the judgment dated 23.8.2017 passed in S.T.C.No.213/2016 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioners : Mr.I.C.Vasudevan

O R D E R

This Criminal Revision Case arises against two concurrent findings of conviction for offence under Section 138 of Negotiable Instruments Act, vide judgment dated 15.11.2017 passed in C.A.No.246/2017 on the file of Principal Sessions Court, Erode, confirming the judgment dated 23.8.2017 passed in S.T.C.No.213/2016 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode.

3. Petitioner/complainant moved a prosecution informing that on 20.04.2016 respondent/Accused borrowed a sum of Rs.4,00,000/- and on the same day respondent/accused issued a post dated cheque dated 20.06.2016 drawn on Axis Bank Ltd., Rasipuram Branch, towards repayment of borrowing, which upon presentation, returned unpaid for the reason 'account closed'. Petitioner/complainant, following the procedures envisaged u/s.138 of the Negotiable Instruments Act, preferred a complaint. The complaint was taken on file in S.T.C.No.306 of 2016 on the file of learned Chief Judicial Magistrate, Erode. Upon committal, the case was transferred to the learned Judicial Magistrate, Fast Track Court-I, Erode, in S.T.C.No.213 of 2016.

4. Before trial Court, petitioner/complainant examined himself as PW-1 and marked 4 exhibits. None were examined on the side of defence nor any exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 23.08.2017, rendered a finding of acquittal. There against, petitioner/Complainant preferred Crl.A.No.246 of 2017 on the file of learned Principal Sessions Judge, Erode, which came to be dismissed under judgment dated 15.11.2017. Hence, this revision.

5. While dismissing the appeal against acquittal, Court below inter alia has reasoned as follows:-

(i) Generally in cases in which cheques are concerned, it is the duty of the complainant to discharge the initial burden of proof that the liability is a legally enforceable one. In this case, the issuance of a cheque and signature of the accused in the cheque are not denied by the accused side. At the same time, the complainant has the heavy burden of proof that he had sufficient source of money on the date of lending to the accused and there was a legally enforceable debt to be discharged by the accused.

(ii) As far as the first burden is concerned, the complainant has to establish that he had sufficient source in his hands on the date of lending money to the accused. But, he has not produced any such documents before Appellate Court as also before Trial Court. It is clear from the evidence of the complainant that already the brother of the accused and the complainant are familiar with each other and contract for Wall sealing was given to the brother of the accused and there was a money transaction in between them for completing that work. In Cross-examination, it is specifically cross-examined by the accused that she does not know the complainant at all. When it is admitted by the complainant that he is already familiar with the brother of the accused, there is a denial on the part of the accused that she does not know the complainant, then Section 139 of Negotiable Instruments Act comes to play. Thorough, perusal of the complaint shows that the complainant did not explain how he knew the accused and on what basis he lent a huge amount of Rs.4,00,000/- at one instance by cash. Moreover, it is not believable to state that for lending Rs.4,00,000/-, the complainant received a post dated cheque only and no other documents are produced either for the properties of the accused or any other Negotiable Instruments like promissory note etc. Hence, Court below does not believe the complainant's case. The complainant has not discharged the burden of proving that he had sufficient source to lent Rs.4,00,000/- at one instance.

(iii) It is a proved law that any prudent man cannot be expected to lend Rs.4,00,000/- without obtaining any other document to evidence of such payment. Hence, it is decided that this complainant has failed to establish the fact that there is a legally enforceable debt payable by this accused. The complainant has not produced any piece of evidence to satisfy the Courts that he had sufficient means or source for lending Rs.4,00,000/- by way of cash in one single payment. Trial Court has carefully gone through the case records and evidence and has rightly acquitted the accused which needs no interference of this Court either on law or on facts."

6. When the above reasonings of the Court below inform one possible view of the matter, it is not for this Court to interfere. This Criminal Revision Case shall stand dismissed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

kmi
To
1. The Principal Sessions Judge
Erode.

2. The Judicial Magistrate,
Fast Track Court No.1,
Erode.

+1 CC to Mr.I.C. Vasudevan, advocate sr 1020.

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PVS(CO)
SP(22/03/2018)