



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C(MD)No.151 of 2018

T.Balasubramanian @ Sarath Bala

: Petitioner

Vs.

M.Soundarapandian

: Respondent

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records from the Lower Court and set aside the Judgment passed by the learned second Additional District Judge, Tuticorin in C.A.No.03 of 2017 dated 15.02.2018 wherein it has confirmed the conviction of the Fast Track Court Magistrate Level Tuticorin in C.C.No.113 of 2015 dated 23.12.2016 by allowing the revision.

For Petitioner

: Mr.K.A.Raama Krishnan

For Respondent

: Mr.A.Thiruvadi Kumar

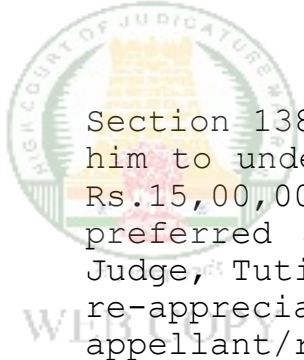
ORDER

This Criminal Revision case is filed praying to set aside the Judgment passed by the learned second Additional District Judge, Tuticorin in C.A.No.03 of 2017 dated 15.02.2018 wherein it has confirmed the conviction of the Fast Track Court Magistrate Level Tuticorin in C.C.No.113 of 2015 dated 23.12.2016.

2.The learned counsel appearing for the petitioner is not ready. The matter relates to offence under Section 138 of Negotiable Instruments Act.

3.The case of the complainant is that the cheques for a sum of Rs.15,00,000/- were issued by the revision petitioner herein for the discharge of his debt, but on presentation of those three cheques for Rs.5,00,000/- each, got bounced for insufficiency of funds. After complying the statutory requirements and issuing notice, private complaint was lodged and tried by the learned Judicial Magistrate, Fast Track Court, Tuticorin in C.C.No.113 of 2015.

4.After examining the complainant as P.W.1 and marking six exhibits on his behalf and examining Sub Inspector of Police, Central Police Station as defence witness (D.W.1) and five exhibits on behalf of defence, the trial Court has found that the subject cheques were issued to discharge the legally enforceable debt and the accused/ revision petitioner is liable to be punished under



Section 138 of Negotiable Instruments Act and accordingly, sentenced him to undergo one year simple imprisonment and pay compensation of Rs.15,00,000/-. Aggrieved by that, the revision petitioner has preferred an appeal before the learned Second Additional District Judge, Tuticorin in C.A.No.3 of 2017. The first appellate Court, on re-appreciation of the evidence, has found that the appellant/revision petitioner is guilty and confirmed the judgment and conviction of the Court below.

5. Aggrieved by that, the accused/revision petitioner has preferred this criminal revision case on the ground that the Courts below have erroneously concluded that the cheques were issued to discharge legally enforceable debt, while there is no substantial material to prove it. The non-production of the income tax assessment by the complainant, ought to have taken note of by the Courts below. The Courts below ought to have considered that huge amount of Rs.15,00,000/- has been given, without receiving any supportive documents, except three cheques, is unbelievable and no presumption should have been arrived.

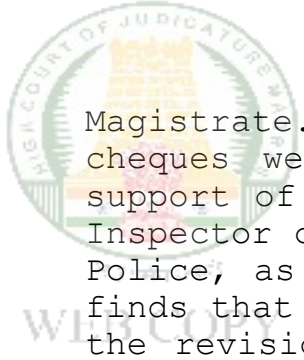
6. Further it is contended that the subject cheques were lost and complaint was duly given to the police station, which has been spoken by D.W.1. Therefore, based on the stolen/lost cheques the complainant has preferred a complaint under Section 138 of Negotiable Instruments Act. The Courts below have not given due consideration for the defence evidence.

7. Point for consideration is whether the Courts below have failed in appreciation of the evidence and whether there is any illegality or impropriety in the judgement of the Courts below.

8. A perusal of the records and the evidence of P.W.1, the complainant, indicates that the revision petitioner and the complainant are friends. For business transaction the revision petitioner used to borrow loan. In one such occasion for trade requirement, complainant lent a sum of the Rs.15,00,000/- to the accused/petitioner. He borrowed money from one of his friends by name Kennedy. The accused/petitioner to discharge the loan gave three cheques for Rs.5,00,000/- each and promised to discharge the debt within six months. When, the cheques were presented, the same were bounced for insufficiency of funds. The complainant informed the revision petitioner about this. The revision petitioner promised to arrange for funds and requested to represent the cheques again. When the cheques were represented again on 26.02.2015, they were again returned for insufficiency of funds. Statutory notice dated 10.03.2015 was issued through lawyer. Notice was received by the revision petitioner on 11.03.2015. The revision petitioner did not pay the cheque amount or replied to the statutory notice.

9. Thus, it is clear that when opportunity was given to the revision petitioner to reply he did not avail that opportunity, but kept quiet till the complainant lodged the complaint before the

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Magistrate. Thereafter, as a defence he has pleaded that the cheques were stolen and he gave a complaint to the police. In support of that, he has also examined D.W.1, one Mr.Ravikumar, Sub-Inspector of Police and marked his complaint to the Sub-Inspector of Police, as Ex.D.1. Further, from the evidence of D.W.1, this Court finds that on receipt of the complaint, Ex.D.1, summon was issued to the revision petitioner which was marked as Ex.D.4. Since he did not appear for enquiry, the complaint was closed and the same has been informed to him. Therefore, the defence theory of lost cheque, has no legs to stand. Non-examination of Kennady and non disclosure of the source of money, are not fatal to this case. Since the complainant has substantially proved his source of money and the revision petitioner has not disputed the signature, except to plead that the cheques were stolen/lost. As recorded earlier, the said defence of lost cheques, is only an after thought. If it is really true, he should have first of all replied to the statutory notice or at least he should have co-operate to the police for investigation in respect of his complaint, which has been marked as Ex.D.1. The revision petitioner has not done neither of the two.

10.In the light of the facts and circumstances of the case, this Court finds no merit in the revision petition and accordingly, the revision petition is dismissed. The concurrent conviction and sentence passed by the Courts below are confirmed.

Sd/

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1.The second Additional District Sessions Judge,
Tuticorin.

2.The Judicial Magistrate Fast Track Court,
Tuticorin.

+1cc to Mr.A.THIRUVADI KUMAR, Advocate, SR.No. 78057

+1cc to Mr.K.A.RAMAKRISHNAN, Advocate, SR.No. 78454

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