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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

CrI.R.C.No.1304 of 2016

Mansoor Ahamed

...Petitioner/Appellant /
Accused

Vs.

1.B.Kannan

...1st Respondent/Complainant

2.The State

Rep. by the Public Prosecutor

Erode

(R2 Given up)

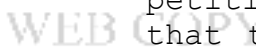
... Respondent/Respondent

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code against the judgment dated 20.09.2016 passed by the learned I Additional District and Sessions Judge, Erode in CrI.A.No.156 of 2015 confirming the judgment dated 05.11.2015 in S.T.C.No.324 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner	: Mr.C.Veeraraghavan
For R1	: No Appearance
For R2	: Given up

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. The respondent preferred a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act and the same was taken on file as STC No.324 of 2013 by the learned Judicial Magistrate, Fast Track Court No.II, Erode. The trial Court, vide judgment dated 05.11.2015, found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs5,000/-, in default to undergo simple imprisonment for a further period of one month. Challenging the same, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Erode,



2. The learned counsel for the petitioner submitted that the petitioner has not borrowed any amount from the respondent and that the respondent has no sufficient means to lend a huge sum of Rs.5,42,000/- to the petitioner and he did not file any document to prove his financial capacity. He also submitted that the petitioner has taken a specific stand in his reply notice that his signature was forged in the cheque in question and that the respondent failed to prove that the cheque in question was issued towards legally enforceable debt against the petitioner. Without considering those aspects, the trial Court has erred in convicting the petitioner for the offence as stated supra and the same was also confirmed by the Appellate Court. Hence, the learned counsel prayed for allowing this revision.

4. At the outset, it is to be borne in mind that while exercising revisional jurisdiction, this Court cannot reappreciate the evidence like a Court of appeal, unless it is shown that the findings on facts arrived at by the Courts below are on the face of it perverse.

6. On the other hand, the petitioner /accused stated that the respondent has filed the present complaint by misusing the blank cheque given by the petitioner for business purpose and he has no sufficient means to lend such a huge amount to the petitioner and hence, there was no legally enforceable liability against him. To prove his defence, he examined the Bank Manager of Axiz Bank, Erode as DW1 and marked Ex.D1 document.



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7. Since the petitioner has admitted the issuance of cheque and signature found therein, the complainant discharged the initial burden lying on him and thereby, the presumption under Section 139 of Negotiable Instruments Act was drawn to the effect that the cheque in question was issued for the legally enforceable liability against the petitioner. In such circumstances, the petitioner has to prove through preponderance of probability that there was no legally enforceable liability against him. However, he has not proved the same by adducing any rebuttal evidence. Though he cross examined the respondent/complainant, nothing was elicited from the same to support his defence. Further, the oral and documentary evidence adduced on the side of the petitioner /accused did not help the accused to believe his case. Hence, the trial Court has rightly held that the petitioner committed the offence under Section 138 of the Negotiable Instruments Act for having issued the cheque in question in discharge of legally enforceable debt. After a threadbare analysis of the materials on record, the Appellate Court has also confirmed the same. This Court finds no infirmity or illegality in the findings so rendered by the Courts below.

8. Hence, this Criminal Revision Case stands dismissed as devoid of merits. The trial Court is directed to secure the accused and commit him in prison to undergo the remaining period of sentence, if any. If any amount has been deposited by the accused either in the appellate Court or in the trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant or to the legal heirs, as the case may be. It is always open to the parties to file an application before the trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence even after the accused is taken into custody. In the event of the matter being compounded under Section 147, *ibid*, before the trial Court, the Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court, who shall make it form part of the records in Crl.R.C.No.1304 of 2016. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. I Additional District and Sessions Judge
Erode

2. The Judicial Magistrate
Fast Track Court No. II
Erode

3. The Chief Judicial Magistrate, Erode

+1cc to Mr. C. Veeraraghavan, Advocate, Sr. No. 16318

Cr1.R.C.No.1304 of 2016

PP (CO)
GS (08/07/2020)