

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Crl.R.C.No.544 of 2016

S.Premkumar

... Petitioner

vs.

V.Suresh Babu

... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the judgement dated 24.02.2016 in Crl.A.No.154 of 2015 on the file of I Additional Sessions Judge, Erode confirming the conviction and sentence passed by the Judicial Magistrate, Fast Track Court No.II, Erode in STC.No.202 of 2013 dated 30.10.2015.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.V.S.Kesavan

O R D E R

The petitioner is the accused and the respondent is the complainant. The complainant filed a private complaint against the petitioner under Section 138 of the Negotiable Instruments Act (for brevity 'the Act') and the same was taken on file as S.T.C.No.202/2013 by the learned Judicial Magistrate, Fast Track Court No.II, Erode. After contest, the trial Court found the accused guilty under Section 138 of the Act and convicted him for the same and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for further period of one month. Challenging the same, the petitioner filed an appeal in Crl.A.No.154 of 2015, before the learned I Additional Sessions Judge, Erode, which ended in dismissal. Aggrieved over the same, the petitioner has preferred this Criminal Revision case.

2. The learned counsel for the petitioner has submitted that the Courts below failed to appreciate that the petitioner had not committed the offence under Section 138 of the Negotiable Instruments Act and that the complainant had failed to establish a legally enforceable debt in respect of the amount covered by the cheque in question to the tune of Rs.4,50,000/-. It is also submitted that there are serious contradictions and inconsistencies in the evidence adduced on the side of the respondent, however, without appreciating the same, the Courts below erred in convicting the petitioner for the offence as stated supra.

3. The learned counsel for the respondent has submitted that the trial Court has considered the materials and evidence in proper perspective and has passed the impugned judgment and the same has been correctly confirmed by the Lower Appellate Court and hence the judgments of the Courts below do not require any interference in the hands of this Court.

4. Heard the learned Counsel on either side and perused the materials available on record.

5. It is settled law that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See: State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand and others etc., (2004) 7 SCC 659].

6. It is alleged in the complaint that the petitioner borrowed a sum of Rs.4,50,000/- from the respondent and issued a post dated cheque (Ex.P1) bearing No.510748 drawn on Bank of Baroda, Erode Branch, for the said sum; when the same was presented for collection on 02.03.2013, it was returned dishonoured with an endorsement "funds insufficient" with a memo (Ex.P2); the respondent sent a legal notice (Ex.P3), calling upon the petitioner to repay the amount; though it was received, the petitioner neither sent reply notice nor repaid the cheque amount and thereby, he committed the offence under Section 138 of the Act.

7. According to the petitioner, he was having business transactions with one Saravanan, who is friend of the respondent and during the course of such business, he gave the disputed cheque to the said Saravanan; the brother of the petitioner was having transaction with the respondent and a dispute arose in the business transaction between them, due to which, in order to revenge the brother of the petitioner, the respondent misused the disputed cheque given by the petitioner to his friend and initiated the present proceedings.

8. During the cross examination, the petitioner as DW.1 admitted Ex.P1 cheque and the signature found therein, however, he has not stated about the date and number of the same. As such, the presumption under Section 139 of the Negotiable Instruments Act is drawn in favour of the complainant to the effect that the disputed cheque was issued by the petitioner for the legally enforceable debt due to the respondent. To rebut the said presumption, the petitioner has not adduced any evidence either in oral or documentary. Further, he not even sent a reply notice to the respondent denying the allegations raised in the complaint. That apart, nothing elicited in his examination to support his defence. Hence, the trial Court has rightly held that the petitioner has not proved that the cheque in question was not handed over to the respondent for any legally enforceable debt/liability, whereas the respondent has proved his case beyond reasonable doubt that there was legally enforceable debt against the petitioner. The Lower Appellate Court has also dealt with the

case properly and correctly confirmed the findings rendered by the Trial Court on merits. This Court is not inclined to interfere with the said factual concurrent findings rendered by the Courts below.

9. In the result, the Criminal Revision case is dismissed being 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 his 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 from part of the records in this Criminal Revision. Registry is directed to transmit the original records if any, the the respective Courts forthwith.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional Sessions Court,
Erode.
2. The Judicial Magistrate,
Fast Track Court No.II, Erode.

+1cc to Mr.V.S.Kesavan, Advocate, S.R.No.17086

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.17308

Crl.R.C.No.544 of 2016

RK (CO)

Maya (27/05/2020)