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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.548 of 2016

M.Chinnusamy
S/o.Muthusamy Gounder,
Prop.Sree Amman Textiles,
Govindanaickenpalayam,
Komarapalayeevalasu Post,
Modakurichi Via,
Erode District. ... Petitioner/Appellant/Accused

Vs

Kandasamy ... Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the judgment of conviction and sentence dated 08.03.2016 in Crl.A.No.1 of 2015 on the file of the Principal Sessions Judge, Namakkal, confirming the judgment dated 13.11.2014 made in S.T.C.No.169 of 2013 on the file of the Judicial Magistrate/FTC, Thiruchengode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.N.Manokaran

ORDER

The petitioner questioned the concurrent findings of conviction and sentence passed by the Courts below in this revision.

2.The allegation against the petitioner/accused is that he borrowed a sum of Rs.5,00,000/- for his business needs from the respondent/complainant on 26.02.2013, and issued a post-dated cheque bearing No.108747, dated 26.03.2013 drawn on UCO Bank, Erode Branch, towards repayment from his proprietary concern account. When the cheque was presented for collection, it was returned with an endorsement "Exceeds Arrangement". It is also alleged that the statutory notice dated 27.04.2013 was served on the petitioner/accused on 03.05.2013 demanding the due, for



which, a reply notice dated 13.05.2013 was served. Hence, the respondent/ complainant has filed the private complaint in S.T.C.No.169 of 2013 on the file of the Judicial Magistrate FTC, Tiruchengode.

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3. Before the trial Court, the complainant examined himself as P.W.1 and also examined P.Ws.2 to 4 and marked Exs.P.1 to P.11 documents, while the revision petitioner/accused examined one Ilango as D.W.1, but not chosen to mark any documents.

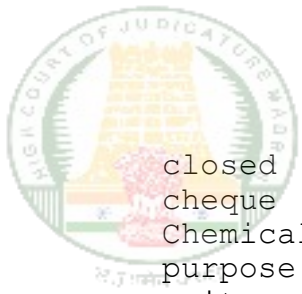
4. Upon appreciation of the oral and documentary evidence adduced by the parties, the Trial Court convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo six months simple imprisonment and to pay a sum of Rs.5,00,000/- as compensation, vide judgment dated 13.11.2014. The said judgment was challenged by the petitioner/accused by filing an appeal in Crl.A.No.1 of 2015. The appellate Court, viz., the Principal Sessions Court, Namakkal, vide judgment dated 08.03.2016, dismissed the said appeal and thereby, confirmed the judgment of conviction and sentence passed by the trial Court. Both the judgments are sought to be challenged in this revision by the petitioner/accused.

5. Learned counsel for the petitioner submitted that the trial Court, without considering the materials placed by the petitioner / accused properly passed the impugned judgment of conviction and sentence and the appellate court, which has to appreciate the facts, also failed to discharge its duty and thus, both the judgments suffer from infirmities and inconsistencies warranting interference of this Court.

6. On the other hand, the learned counsel for the respondent/complainant submitted that the Trial Court considered all the materials and evidence and passed the impugned judgment and the findings of the trial Court have been rightly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The petitioner / accused asserted that he has no loan transaction with the complainant and he has not borrowed the amount as alleged and not issued the cheque to the complainant. It is also claimed that the petitioner proprietary firm was



closed 7 years before giving the complaint and the subject cheque was issued to the complainant and his sons of Bombay Chemicals 7 or 8 years prior to the date of complaint for the purpose of business transactions, which was not returned in spite of repeated requests and the said cheque was misused for lodging the present private complaint. But the trial Court categorically held that the petitioner / accused has not taken any legal steps, namely, lodging a police complaint or issuing a legal notice or issuing stop payment, etc. and there is no explanation for the same, which raises suspicion with regard to the said defence. The Trial Court also held that the accused need not prove his case beyond reasonable doubt, but he should establish his case rebutting the presumption. Thus, the trial Court, keeping in mind the evidence available on record and also considering the decided cases, concluded that the respondent/complainant proved the legally enforceable debt or liability, whereas the petitioner/accused failed to rebut the presumption under Section 139 of the Act and ultimately, convicted the petitioner/accused and sentenced him for the offence under Section 138 of the Act.

9.The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court on merits.

10.This Court finds no reason much less valid reason to interfere with the concurrent findings so rendered by the Courts below. Further, it is settled law that while exercising revisional jurisdiction, this Court cannot re-appreciate 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 on it perverse.

11.In fine, this revision is dismissed being devoid of merits. The trial Court is directed to secure the petitioner/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.

12. It is always open to the parties to file an application before the trial Court under Section 147 of the NI 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), who shall make it form part of the records in this criminal revision. The 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. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate/FTC,
Thiruchengode.

Copy to

- 1.The Assistant Registrar(Criminal Side),
Criminal Section, High Court, Madras.
- 2.The Section Officer,
Criminal Section, High Court, Madras.

+lcc to Mr.C.S.Saravanan, Advocate Sr.14310
+lcc to Mr.N.Manokaran, Advocate Sr.13881

Cr1.R.C.No.548 of 2016

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srg 01/07/2020