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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2020

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.R.C.No.661 of 2016

and

Crl.MP.No.4653 of 2016

K.Gururam ... Petitioner/Appellant/Accused

Vs.

R.Ashokan ... Respondent/Respondent/Complainant

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the Judgement dated 30.03.2016 in Crl.A.No.9 of 2013 on the file of the Court of the District Judge, District Court No.II, Kancheepuram, modifying the Judgement in C.C.No.74 of 2011 dated 26.03.2013 on the file of the Judicial Magistrate No.1, Kancheepuram.

For Petitioner : Mr.T.Ravi

For Respondent : Mr.S.Ganesh

O R D E R

The petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file as C.C.No.74 of 2011 by the learned Judicial Magistrate No.I, Kancheepuram. By judgment dated 26.03.2013, the trial Court found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly convicted him for the same and sentenced to undergo six months simple imprisonment and to pay a compensation of Rs.90,000/- (amount of cheque + costs of Rs.5,000/-) to the complainant, in default to undergo simple imprisonment for a further period of three months. Challenging the same, the petitioner preferred an appeal in Crl.A.No.09/2013 before the District Court No.II, Kancheepuram. The Appellate Court vide judgment dated 30.03.2016, partly allowed the said appeal by confirming the judgment of conviction and payment of compensation passed by the trial Court and



modifying the sentence of simple imprisonment from six months to three months. Aggrieved over the same, the petitioner has filed 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 any offence under Section 138 of the Negotiable Instruments Act and that the respondent had failed to establish a legally enforceable debt in respect of the amount covered by the cheque in question to the tune of Rs.85,000/-. It is also submitted that the trial Court failed to note the contradictory versions of the evidence adduced by the witnesses on the side of the respondent and the same was also erroneously confirmed by the Appellate Court.

3. The learned counsel for the respondent has submitted that the trial Court has correctly considered the materials and evidence in proper perspective and has 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.

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

5. At the outset, it is to be borne in mind 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.

6. According to the respondent /complainant, the petitioner borrowed a sum of Rs.85,000/- as hand loan for the family needs on first week of June 2010 and in discharge of the same, he issued a cheque bearing No.076893 dated 04.03.2011 drawn on Axis Bank, Kancheepuram, for the said sum. When the said cheque was presented for collection, it was returned dishonoured for want of sufficient funds on 12.04.2011. The respondent issued a statutory notice on 07.05.2011, which was received by the petitioner on 09.05.2011. However, the petitioner did not choose to repay the cheque amount, which compelled the respondent to file the private complaint against him for the offence under Section 138 of the Negotiable Instruments Act. To prove his case, the respondent examined himself as P.W.1 and marked Exs.P1 to P5 documents.



7. On the other hand, the petitioner denied the averments made in the private complaint and he stated that it was a false case. It is his further case that the respondent has no financial capacity to lend the sum of Rs.85,000/- covered by the cheque in question. To support his case, he examined the Manager of Axis Bank, Kancheepuram as DW1 and marked his account statement from 2009 to 2011 and extract of the cheque books issued to him as Exs.D1 and D2 respectively.

8. As the respondent complied with all the statutory requirements and having regard to the fact that the petitioner has not disputed the issuance of cheque in question and the signature found thereon, the presumption under Section 139 of the Negotiable Instruments Act is definitely drawn in favour of the respondent that the cheque in question was issued by the petitioner to the respondent in discharge of the legally enforceable debt. As such, the petitioner has to rebut the same by preponderance of probabilities.

9. On a threadbare analysis of the materials and evidence available on record, it is seen that the petitioner did not avail the first opportunity by sending reply to the legal notice issued by the respondent. Further, in the Section 313 Cr.P.C questioning, he merely denied the charge levelled against him and did not set out any defence. Though he cross examined P.W.1/respondent, nothing was elicited in the same to rebut the presumption drawn in favour of the respondent and to disbelieve the case of the respondent that he had advanced a loan of Rs.85,000/- to the petitioner, for discharge of which, the petitioner had issued Ex.P1 cheque. That apart, the evidence of DW1/Branch Manager of Axis Bank, Kancheepuram and Exs.D1 and D2 documents would only establish the case of the respondent that the cheque in question was issued by the petitioner to the respondent for the loan transaction in June 2010.

10. It is also to be pointed out at this juncture that the petitioner filed a discharge petition before the trial Court stating that he used to borrow amounts from the respondent at usurious interest, for which, blank cheque and pronote were given to the respondent; the petitioner had repaid the entire amount, but the respondent had demanded more amount and illegally taken away his brief-case containing cheque books and signed papers. However, the said contentions have not been put forth as suggestions to P.W.1 in the course of cross examination, which raised a genuine doubt in the mind of the trial Court that the same are only after thought of the petitioner to escape from the liability. Hence, the trial Court has observed that the petitioner failed to rebut the presumption by probablisising his defence, whereas, the respondent clearly proved the guilt of the petitioner. Accordingly, the trial Court



has convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The Appellate Court has also dealt with the case properly and correctly confirmed the findings rendered by the trial Court, however modified by the period of sentence imposed on the petitioner, having regard to the facts and circumstances of the case.

11. This Court finds no infirmity or illegality to the aforesaid factual findings rendered by the Courts below.

12. In the result, the Criminal Revision case is dismissed being devoid of merits. Consequently, connected Miscellaneous petition is closed. 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 form part of the records in this Criminal Revision. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The District Court No.II,
Kancheepuram.
2. The Judicial Magistrate Court No.1,
Kancheepuram.



Copy to

1.The Assistant Registrar,
Criminal Section,
High Court, Madras.

2.The Section Officer,
Criminal Section Record,
High Court, Madras.

Cr1.R.C.No.661 of 2016

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srg 15/07/2020