IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.03.2020

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

Crl.R.C.No.185 of 2014

M.Duraisamy ... Petitioner/ Appellant / Accused

-Vs-

K.Sundarajan ... Respondent/ Complainant

Prayer: Criminal Revision Petition is filed under sections 397 and 401 of Cr.P.C to call for the records and setaside the judgment dated 08.05.2013 made in S.T.C.No.444 of 2010 rendered by the Judicial Magistrate No.I, Tiruppur which was confirmed by the Principal Sessions Judge, Tiruppur in C.A.No.33 of 2013 dated 18.12.2013 and acquit the petitioner from the above case,

For Petitioner : Mr.A.Tamil Rajan

For Respondent : Mr.V.Ashok kumar

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O R D E R

The Criminal Revision Petitioner has been convicted for the offence punishable under section 138 of the Negotiable Instruments Act, sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one month and also directed to pay Rs.4,00,000/-as compensation to the complainant within one month by the Judicial Magistrate No.I. Tirupur, by way of the judgment dated 08.05.2013 passed in S.T.C.No.444 of 2010. Impugning the conviction and sentence imposed on him, the Revision Petitioner has preferred the Appeal in Crl.A.No.33 of 2013 on the file of the Principal Sessions Court, Tirupur. The Principal Sessions Court, Tirupur on an appreciation of the materials placed on record and the submissions made, was pleased to confirm the sentence and conviction imposed on the Revision Petitioner by the

Judicial Magistrate No.I, Tiruppur and resultantly dismissed the Appeal preferred by the Revision petitioner. Challenging the same, the present Revision Petition has been laid.

2. Briefly stated, according to the respondent/complainant, the Revision Petitioner had borrowed a sum of Rs.4,00,000/- from him for his urgent family expenses on 16.04.2009 and in evidence of the said borrowal, he had executed a demand promissory note in favour of the respondent/complainant agreeing to repay the borrowed sum with interest at 12% per annum on demand and however he had failed to repay the borrowed sum as agreed to, despite several demands putforth by the respondent/complainant and subsequently, the Revision Petitioner had issued a cheque bearing No.65948 drawn on UTI Bank Limited, Tirupur for Rs.4,00,000/- dated 29.09.2009 towards the discharge of the abovesaid amount borrowed from the respondent/complainant and when the abovesaid cheque was presented for collection by the respondent/complainant on 11.11.1999 in Oriental Bank of Commerce, Tiruppur and the same had been returned on 12.11.2009 for the reason " funds insufficient" and consequently it is evident that the Revision Petitioner had issued the abovesaid cheque only with the criminal intention of cheating the respondent/complainant fully knowing that the cheque would not be honoured on presentation and that there is no sufficient funds in his account and the respondent/complainant had issued the legal notice on 27.11.2009 and despite the receipt of the same by the Revision Petitioner on 30.11.2009, he had failed to pay the cheque amount to the respondent/complainant and therefore according to the respondent/complainant, the Revision Petitioner has committed an offence punishable under section 138 of the Negotiable Instruments Act.

3. The Revision Petitioner/Accused on being questioned with reference to the complaint lodged against him by the respondent/complainant, he had pleaded not guilty.

4. To sustain the case of the respondent/complainant, P.Ws.1 to 3 were examined. Exs.P1 to P5 were marked. On the side of the Revision Petitioner, no oral and documentary evidence has been adduced.

5. On an appreciation of the materials placed on record, as above pointed out, the Judicial Magistrate No.I, Tirupur had convicted and sentenced the Revision Petitioner for the offence punishable under section 138 of the Negotiable Instruments Act. The same had also been confirmed by the Principal Sessions Court, Tiruppur.

6. Therefore, the only point that arises for consideration in this Revision Petitioner is whether the Courts below are justified in convicting and sentencing the Revision Petitioner for the offence punishable under section 138 of the Negotiable Instruments Act.

7.As abovepointed out, according to the respondent/complainant, the Revision Petitioner had borrowed Rs.4,00,000/- from him on 16.04.2009 and had executed the promissory in his favour, promising to repay the borrowed sum with interest on demand. The promissory note has been marked as Ex.P1. That the Revision petitioner had borrowed the amount of Rs.4,00,000/- from the respondent/complainant and executed the promissory note Ex.P1 has also been spoken to by the attestor of the promissory note examined as P.W.2 and the scribe of the promissory note examined as P.W.3. As rightly held by the Courts below, the evidence of P.Ws.2 and 3 are found to be cogent, acceptable and trustworthy. That apart the respondent/complainant has also tendered evidence in support of the abovesaid case projected by him. Thus, on an analysis and appreciation of the evidence tendered by P.Ws.1 to 3, in all, the Courts below are found to be justified in holding that the Revision Petitioner had indeed borrowed Rs.4,00,000/- from the respondent/complainant and executed the promissory note in his favour marked as Ex.P1.

8. According to the respondent/complainant, the Revision petitioner had not paid the amount borrowed under the promissory note despite several demands on his part. Finally, it is putforth that he had issued the cheque dated 29.09.2009 drawn on UTI Bank Limited, Tiruppur towards the discharge of the borrowed amount. The abovesaid cheque has been marked as Ex.P2. It is stated by the respondent/complainant that the abovesaid cheque on presentation for collection had been returned with an endorsement of the Bank which has been marked as ExP3. Therefore, from Exs.P2 and P3, it is found that the Revision Petitioner despite having knowledge about the insufficient funds in his account and the cheque issued by him in favour of the respondent/complainant would not be honoured, deliberately with a view to mislead the respondent/complainant, is found to have issued the cheque as abovestated.

9. In such view of the matter, it is found that the respondent/complainant had chosen to issue the legal notice dated 27.11.2009 calling upon the Revision Petitioner to pay the amount involved in the matter. The abovesaid copy of the notice has been marked as Ex.P3. The Revision Petitioner had received the same and the acknowledgement card received from him has been marked as

Ex.P.5. However, the Revision Petitioner had not chosen to repudiate the claim of the respondent/complainant putforth in the notice that the Revision Petitioner had borrowed Rs.4,00,000/- on 16.04.2009 and executed the promissory note in evidence thereof and thereafter had issued the cheque for the discharge of the said loan amount and the factum of the said cheque having been dishonoured for the reason "funds insufficient" . Therefore, as rightly held by the Courts below, the Revision Petitioner having no case to repudiate the lawful claim of the respondent/complainant is found to have not chosen to challenge the claim of the respondent/complainant made under ExP3 notice. In the light of the abovesaid facts, it is found that as held by the Courts below, the Revision Petitioner had issued the cheque in question Ex.P3 only for the discharge of the legally enforceable debt and in the light of the abovesaid factors, the defence version putforth by the Revision Petitioner that he had not issued the cheque towards the borrowal of Rs.4,00,000/- on 16.04.2009 from the respondent/complainant and that the same had been filled up and the respondent/complainant had received the unfilled cheque and the promissory note at the Registrar's office. However with reference to the abovesaid pleas, the Revision Petitioner having not chosen to send a reply reiterating the abovesaid facts, as held by the Courts below, it is to be held that the Revision Petitioner had acceded to the claim putforth by the Respondent/complainant in the legal notice.

10. To non-suit the respondent/complainant's case, the Revision Petitioner has not chosen to place any acceptable material and also not able to cull out any factor from the available materials on record, in support of his defence version. Furthermore as could be seen from the materials placed on record, the endeavour of the Revision Petitioner to place additional evidence during the course of appeal had been rightly turned down by the appellate court.

11. For the reasons aforestated, the Courts below had correctly determined that the respondent/complainant had established the case levelled against the Revision Petitioner and the Revision Petitioner had failed to repudiate the statutory presumption raised against him and in such view of the matter, the conviction and sentence of the Revision Petitioner for the offence punishable under section 138 of Negotiable Instruments Act of the Courts below do not warrant any interference.

12. I do not find any infirmity or error warranting any interference in the abovesaid determination of the Courts below. In conclusion, the Revision Petition fails and is accordingly dismissed. If the Revision Petitioner

had not undergone the sentence imposed on him, the trial court is directed to take appropriate steps to secure the presence of the Revision Petitioner as per law for complying with the same.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal Sessions Judge, Tiruppur.
2. The Judicial Magistrate No.I, Tiruppur.
3. The Chief Judicial Magistrate,
   Tiruppur ----- (for information)

Crl.R.C.No.185 of 2014

vba (CO)
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