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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.400 of 2017

S.Sakthivel

...Petitioner/Appellant/Accused

.Vs.

K.G.Sivalingam

...Respondent/Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the conviction, imposed in the judgment dated 15.09.2016 made in C.A.No.11 of 2016 on the file of the I Additional Sessions Judge, Erode, confirming the conviction imposed in judgment dated 22.12.2015 made in S.T.C.No.215 of 2014 on the file of the Judicial Magistrate FTC-1, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.E.D.Sethupathy

O R D E R

The petitioner herein is the accused and the respondent herein 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 STC No.215 of 2014 by the learned Judicial Magistrate, Fast Track Court No.1, Erode. After contest, the petitioner was found guilty under Section 138 of the Negotiable Instruments Act and accordingly he was convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for 15 days. Challenging the same, the petitioner preferred an appeal before the learned I Additional Sessions Judge, Erode, which ended in dismissal, against which the present Criminal Revision has been filed.

2.The learned counsel for the petitioner submitted that the Courts below have failed to note that there is absolutely no evidence on record to prove the transaction between the parties.



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It is further submitted that the Courts below have failed to note that existence of legally recoverable debt is not a matter of presumption under Section 139 of the Negotiable Instruments Act as it merely raises a presumption in favour of the holder of the cheque that the same has been issued for discharge of the debt or other liability. It is also submitted that the respondent had not proved his wherewithal to lend a huge sum of Rs.2,00,000/- to the petitioner and the very execution of Ex.P1 cheque in question. Stating so, the learned counsel prayed to set aside the judgments of the Courts below by allowing this revision.

3.On the other hand, the learned counsel for the respondent submitted that the trial Court has correctly considered the materials and evidence and has passed the impugned judgment and the findings of the trial Court have been rightly 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 carefully and meticulously.

5.It is the case of the respondent / complainant that the petitioner / accused borrowed a sum of Rs.2,00,000/- from him as loan on 02.12.2013. To discharge the said liability, he issued a post dated cheque bearing No.000110 dated 10.12.2013 for the said sum of Rs.2,00,000/- drawn on Karur Vysys Bank, Erode Branch. When the same was presented for collection, it was returned dishonoured with an endorsement "funds insufficient". The respondent issued a legal notice on 06.01.2014. Though it was received on 07.01.2014, the petitioner neither issued reply nor repaid the cheque amount to the respondent. Hence, the respondent filed the private complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act. To support his claim, he examined himself as P.W.1 and marked Exs.P1 to P4 documents.

6.The petitioner has taken a defence that he had no transaction with the respondent and the cheque in question was given only as security and hence, there is no legally enforceable debt against him. In support his defence, he examined DW.1 to DW.3 and marked Ex.D1.

7.As per the provisions of law, since the petitioner admitted the issuance of cheque and his signature found therein, then, he has to prove that the cheque was not given for any legally enforceable debt, but only for security. Though DW.1 and DW.2 who are stated to be brokers and known to the parties, deposed that the cheque was given by the petitioner only for security, there is no specific statement as to what date and



what month, the cheque was issued to the respondent as security. Further, no document was produced to show that they are textile brokers. That apart, the petitioner has not sent any reply denying the allegations raised in the complaint. Thus, the petitioner failed to rebut the presumption under Section 139 of Negotiable Instruments Act. Hence, this Court is of the view that the cheques were issued only for discharging legally enforceable debt and the petitioner has committed the offence under Section 138 of the Act. Both the Courts below have considered all the aspects in proper perspective and came to the correct conclusion. In such view of the matter, the judgments of conviction and sentence passed by both the Courts below do not warrant any interference.

8. In fine, the revision preferred by the petitioner/accused deserves to be dismissed and is accordingly, dismissed. 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 (Cr1. 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

//True Copy//

Sub Assistant Registrar

kas

To

1. I Additional Sessions Judge
Erode

2. The Judicial Magistrate
FTC-1, Erode



cc to:

The Assistant Registrar(Crl.side),
High Court,
Madras.

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The Section Officer,
Criminal Section,
High Court,
Madras

(To transmit the original records if any to respective courts)

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.13481

+1cc to Mr.E.D.Sethupathi, Advocate, S.R.No.13402

Crl.R.C.No.400 of 2017

GJ(CO)
RN(06/07/2020)