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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1582 of 2016

G.Gobi

...Petitioner

Vs

N.Maharajan

...Respondent

Prayer :- Criminal Revision filed under 397 and 401 of the Criminal Procedure Code, to set aside the judgment dated 30.08.2016 passed in Crl.A.No.18/2016 on the file of the Additional District and Sessions Judge, Krishnagiri confirming the judgment dated 09.10.2015 passed in S.T.C.No.47/2015 on the file of the Judicial Magistrate (Fast Track) Court, Hosur.

For Petitioner : Mr.M.Karthik,
For Mr.I.C.Vasudevan

For Respondent : Mr.A.Tamilvanan

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This criminal revision petition has been filed against the judgment dated 30.08.2016 passed in Crl.A.No.18/2016 on the file of the Additional District and Sessions Judge, Krishnagiri, confirming the judgment dated 9.10.2015 passed in S.T.C.No.47/2015 on the file of the Judicial Magistrate (Fast Track) Court, Hosur.

3. The revision petitioner is the convicted accused.

4. The respondent filed a complaint in S.T.C.No.47/2015 before the learned Judicial Magistrate, Hosur, alleging that the respondent did not prove his ability to pay the huge amount of Rs.9,00,000/- to the petitioner, especially, when he did not mark any Income Tax returns, bank statements, etc to show his capacity to pay the same.



5. The non-reply to the notice issued by the respondent alone would not be sufficient to reject the defence and convict the petitioner/accused.

6. The trial Court laid the conviction based upon the answer elicited in the cross-examination, coupled with answer given by the accused under Section 313 (3) of Cr.P.C.

7. The appeal preferred by the revision petitioner in Crl.A.No.18/2016 before the learned Additional District Judge, Krishnagiri, was dismissed and hence the criminal revision.

8. The learned counsel for the revision petitioner/accused contended that the complainant has stated that the accused is known to him and approached him on 18.09.2014 for a hand loan of Rs.9,00,000/- to repay his debts. It is stated that the accused undertook to refund the loan amount within one month. Believing the accused, the complainant was alleged to have given the amount. It is further stated that a cheque was issued by the accused on 26.12.2014, which was presented to the complainant's bank on the same day and it was returned as "insufficient fund". A legal notice was issued on 05.01.2015, which was received by the accused, but not replied. Thereafter, the complaint was filed.

9. On the side of the complainant, he was examined as P.W.1. The accused has not let in oral evidence and marked two documents in the cross-examination of P.W.1. The trial Court, after conclusion of trial, convicted the accused. The complainant has marked the cheque under Ex.P1. The legal notice dated 05.01.2015 was marked as Ex.P3. This notice was received by the accused, which is not disputed. The postal receipt and the acknowledgment were also marked as Ex.P4 and Ex.P5 respectively. The accused failed to pay the cheque amount even after legal notice. No reply was given for the notice under Ex.P3.

10. On a perusal of the documents, I find that, as per the complaint, the loan amount was borrowed on 18.09.2014 and Ex.P1 cheque was issued on 26.12.2014 and the same was returned for "insufficient funds" which is Ex.P2. Ex.P3 is the legal notice issued on 05.01.2015 and there was no reply during the cross-examination of P.W.1. It is suggested that the petitioner has availed loan only for Rs.4,50,000/- from the respondent and he has executed a General Power of Attorney for the sale of a piece of land, which the respondent herein also sold and realized Rs.5 lakhs.

11. During the questioning, the revision petitioner could state that he has borrowed loan from the complainant. According



to him, total amount of loan he borrowed was Rs.4,50,000/- and at the time of borrowal unfilled blank cheques were given to the complainant. It is further stated that the total loan amount was given in instalments and the interest rate agreed was 3%. The accused further stated that since, there was a loss in his business, he was not able to pay the interest. He further stated a General Power of Attorney was given in favour of the complainant and thereafter the complainant has entered into an agreement for sale of the property and received a sum of Rs.5 lakhs. The accused also stated that the cheques were not filled up.

12. Admittedly, after the receipt of Ex.P3 legal notice, no reply was issued and no defence evidence was let in. The revision petitioner/accused has not explained as to the reason for non sending the reply of the said legal notice in Ex.P3.

13. On a combined reading of Exs.P1 to P3, coupled with the evidence of P.W.1, the trial Court has rightly come to the conclusion that borrowal has been proved and also the issuance of the cheque and dishonour of the cheque for the reason of insufficient funds, all have been proved in the manner known to law. Consequently, the trial Court held that the respondent/complainant has proved the presumption under Section 139 of the Negotiable Instruments Act.

14. On the point as to whether the revision petitioner/accused has rebutted the presumption, both the Courts below have concurrently held that no steps have been taken by the revision petitioner to rebut the same.

15. After hearing the submissions made by the revision petitioner and taking into consideration the money transaction between P.W.1 and the petitioner herein and also the real estate transaction, the trial Court has rightly come to the conclusion that the respondent has proved that the cheque was issued for proper consideration.

16. Admittedly, the revision petitioner/accused has not stated any reply notice to the notice under Ex.P3. Now he has taken a plea in the trial that from General Power of Attorney was given in favour of the revision petitioner for realization of Rs.5 lakhs . No piece of evidence has been adduced either during the cross-examination of P.W.1 or when he was allowed to let in evidence.

17. Admittedly, the revision petitioner/accused has not taken steps to go into the witness box to adduce the evidence to probablize the suggestive case and in the absence of any probablize of the suggestive case, both the Courts below have



rightly come to the conclusion that the revision petitioner/accused has failed to prove the presumption and consequently laid the conviction. The concurrent findings by both the Courts below do not suffer from any illegality or perversity and taking note of the scope of the criminal revision and also on facts and there are no merits in the revision petition.

18. Accordingly, this Criminal Revision Petition is dismissed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate (Fast Track) Court,
Hosur.

+1cc to Mr.D.Saravanan, Advocate, S.R.No.34419

+1cc to M/s.I.C.Vasudevan, Advocate, S.R.No.34623

Cr1.R.C.No1582 of 2016

PCH(CO)
RVM(10/08/2021)