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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.954 of 2017
and
Crl.M.P.No.8904 of 2017

S. Sathyamoorthy

..Petitioner/Accused

Vs.

G.A. Palanisamy

..Respondent/Complainant

PRAYER : Petition filed under Section 397 & 401 of the Criminal Procedure Code, to set aside the conviction and sentence imposed on the petitioner dated 21.06.2017 made in Crl.A.No.135 of 2016 on the file of the IV Additional District and Sessions Judge, Erode District at Bhavani by confirming the conviction and sentence imposed on the petitioner dated 29.07.2016 made in S.T.C.No.14 of 2015 on the file of the II Additional District Munsif, Bhavani, Erode District.

For Petitioner : Mr. B. Gopala Krishnan

For Respondent : Mr. N. Manoharan

O R D E R

The matter is heard through "Video Conference".

2. Convicted accused is the revision petitioner herein. The respondent/private complainant filed a private complaint under Section 200 of Cr.P.C., to prosecute the accused under Section 138 of Negotiable Instruments Act, in S.T.C.No.14/2015 and the learned Magistrate has convicted the accused and the same was confirmed in criminal appeal in Crl.A.No.135/2016 by the 4th Additional District and Sessions Judge, Erode District, Bhavani. Hence, the revision.

3. Heard the respective counsel.

4. The complainant as P.W.1, deposed that the complainant examined himself as P.W.1 for support of his case and P.W.1 had



deposed that the accused borrowed a hand loan for a sum of Rs.3,00,000/- from the complainant on 21.03.2014 for his urgent family need and business expenses and agreed to repay the said amount within two months. In discharging his liability, the accused issued a cheque in favour of the complainant for a sum of Rs.3,00,000/-, bearing cheque No.000868, drawn on Axis Bank, Ammapettai Branch, on 11.07.2014. At request of the accused, the complainant presented the above said cheque for encashment through his bank, ie., State Bank of India, Ammapettai Branch on 12.07.2014 and the same was returned with an endorsement as "Funds Insufficient" on 14.07.2014. The complainant would contend that the cheque in question was produced and marked as Ex.P1.

5. The defence theory of the accused is that by way of security, he has given Ex.P1-cheque which is signed blank cheque, the same was misused, subsequently, filled up and filed this case. The trial Court has held that in view of the fact of the circumstances as spoken to by the evidence of P.W.1 and documentary evidence of Exs.P1 to P5, has come to the conclusion that the complainant is entitled to the statutory presumption under Section 139 and defence has not probabilised the case. Accordingly, laid the conviction and ordered the sentence as stated supra. On appeal, in C.A.No.135 of 2016, the appeal was dismissed.

6. The learned counsel for the petitioner would contend that the cheque was issued in the name of the proprietor concern, without adding the name of the party, the private complaint is not maintainable, whom the cheque was issued as a security had never initiated for payment and presentation in the bank.

7. The learned counsel for the respondent made a submission in support of both the Courts below.

8. On perusal of the evidence of P.W.1 and coupled with the documentary evidence of Exs.P1 to P5, this Court finds that the finding rendered by the trial Court that the private complainant is entitled for statutory presumption is in order. The accused obtained a loan from the complainant on behalf of "Sri Kannimar Agency". But, Sri Kannimar Agency is not added as an accused in this case. The accused issued a cheque in favour of the complainant in the capacity of proprietor/authorised signatory of Kannimar Agency. The learned counsel for the respondent would relied upon the decision reported in (2007) 5 SCC 103 (Raghu Lakshminarayanan Vs. Fine Tubes), the Hon'ble Supreme Court has held as follows:

B. Corporate Laws - Proprietary concern - Meaning - Distinguished from partnership firm and company - Words



and Phrases - "Proprietary concern" - Companies Act, 1956, S.34 - Partnership Act, 1932, S.4 - Negotiable Instruments Act, 1881, S.141.

9. The proprietary concern is not an independent, legal and juristic entity having legal recognition in the eye of law and it can neither initiate proceedings nor proceedings be initiated against it. In case of proprietary concern, the proprietor is always an affected person, who can either indict or be indicted. Therefore, the proprietary concern need not add as an accused and the defence of the accused could not be sustained.

10. The second contention is that the signed blank cheque was given to the complainant has been misused. It is only as a security, in the decision reported in (2009) 4 SCC 194 (Bir Singh Vs. Mukesh Kumar), the Hon'ble Apex Court has held that even blank signed cheque was given to the petitioner, in view of the provisions under Section 20, 87 and 139 of Negotiable Instruments Act, The onus in due course is entitled for to fill up the cheque and for presentation. Further, in the decision reported in (2020) 2 CTC 421, the Hon'ble Apex Court had taken that even though the cheque was issued as a security, the payment is legally enforceable, at para 7, assumes significance.

11. In view of the settled proposition of law, in the above said decisions and also, taking note of the fact that I find that non inclusion of the existence of liability in proprietary concern is not fatal to the prosecution and the accused has not examined a single witness to prove the defence. Though it is not necessary to be examined, however, he can very well establish his case by probabilising his suggestive case during the cross examination of P.W.1. However, on perusal of evidence of P.W.1, I find that the defence has not probabilised the suggestive case. Though, the plea was raised by the defence that the cheque was given to one Mr. Balasubramaniam, who had manipulated this private complainant by filling of the cheque, he has not examined in cross examination. It is always open to the contention to probabilise the suggestion, in any one of the method to probabilise the defence theory. However, in the instance case, the accused has failed to prove the defence theory and hence, the concurrent finding rendered by both the Courts below cannot be found fault with and do not suffer from any irregularity or illegality or warranting interference in this criminal revision. In the powers of this Court, is confined to either irregularity or illegality or incompatibility in the appreciation of evidence.

12. In view of the fact that the finding rendered by both the Courts below are found to be in consonance with the law laid down by the Hon'ble Supreme Court, as stated supra and hence, I



do not find any merits in this case. Accordingly, the criminal revision case stands dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AT

To

1. The IV Additional District and Sessions Judge,
Erode District, Bhavani
2. The II Additional District Munsif, Bhavani,
Erode District.

+1cc to M/s.B.Kumarasamy, Advocate, S.R.No.45597

+1cc to M/s.N.Manokaran, Advocate, S.R.No.45462

Cr1.R.C.No.954 of 2017
and
Cr1.M.P.No.8904 of 2017

SJ(CO)
RGA(01/10/2021)