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Crl.R.C.No.108 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.108 of 2018

R.Varatharajan

... Petitioner

Vs.

Mohammed Ismail

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records in CA.No.81 of 2017 dated 07.12.2017 on the file of the learned II Additional District Sessions Judge, Salem and confirming the order in S.T.C.No.49 of 2014 dated 02.12.2016 on the file of Learned Judicial Magistrate (Fast Track), Court, Attur and to set aside the same.

For Petitioner : Mr.S.P.Yuvaraj

For Respondent : Mr.P.Navaneethakrishnan

ORDER

This Criminal Revision case has been filed to set aside the order in CA.No.81 of 2017 dated 07.12.2017 on the file of the learned II Additional District Sessions Judge, Salem, confirming the order in



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S.T.C.No.49 of 2014 dated 02.12.2016 on the file of Learned Judicial Magistrate (Fast Track), Court, Attur.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that on 06.02.2014, the petitioner borrowed a sum of Rs.2,00,000/- from the respondent. In order to repay the same, the petitioner issued a cheque. The said cheque was presented for collection and the same was returned dishonored with an endorsement “Insufficient Funds”. Immediately, after causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P.1 to P.4. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to pay a sum of Rs.1,30,000/- as fine, failing which, the petitioner



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shall undergo four months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner raised grounds that the respondent categorically admitted in his cross examination that he received part of the cheque amount. Even then, he presented the cheque for the entire amount. Therefore, the petitioner is not liable to be punished for the offence punishable under Section 138 of Negotiable Instruments Act. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2022 LiveLaw (SC) 830** in the case of ***Dashrathbhal Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr.***

5. A perusal of records revealed that the respondent was examined as P.W.1. He deposed that the petitioner borrowed a sum of Rs.2,00,000/- from the respondent. In order to repay the same, the petitioner issued a cheque for a sum of Rs.2,00,000/-. The said cheque was presented for collection and the same was returned dishonored with an endorsement



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“Insufficient Funds”. After causing legal notice, the respondent lodged a complaint. Again, he was recalled and deposed that pending the complaint the petitioner was in due of Rs.2,00,000/-. Now, he has to pay the remaining amount of Rs.1,30,000/-. Therefore, while pending the complaint, the petitioner paid a sum of Rs.70,000/- and he was in due of Rs.1,30,000/-.

6. The Hon'ble Supreme Court of India held in **2022 LiveLaw (SC) 830** in the case of ***Dashrathbhal Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr***, is extracted hereunder,

“30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the



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debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided".

7. Thus, it is made clear that the provisions under Section 56 r/w Section 15 of the Negotiable Instruments Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque, when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under



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Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment. In the case on hand, admittedly, while pending the complaint, the petitioner paid part of the amount i.e. Rs.70,000/- out of Rs.2,00,000/-. When the respondent was recalled, he deposed that now, the petitioner was in due of Rs.1,30,000/- out of Rs.2,00,000/-. Thus, the petitioner did not make any payment after issuance of the cheque and before the said cheque was presented for encashment. Therefore, the judgment cited by the learned counsel for the petitioner is not applicable to the case on hand and the petitioner is liable to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act. That apart, the Statute mandates that once the signature(s) of an accused on the cheque are established, then these 'reverse onus' clauses become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him. Admittedly, the petitioner did not even send any reply and failed to examine any witness to rebut the presumption.

8. Therefore, both the Courts below rightly found the petitioner



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guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to pay the fine amount. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

9. Accordingly, this Criminal Revision case stands dismissed.

18.10.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The II Additional District Sessions Judge, Salem.
2. The Judicial Magistrate (Fast Track), Court, Attur.

G.K.ILANTHIRAIYAN, J



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