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CRL.R.C.No.123 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

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

CRL.R.C.No.123 of 2018
and CrI.M.P.No.929 of 2018

Senthilkumar

... Petitioner

Vs.

G.Sampath

... Respondent

Prayer: The Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the judgment made in C.C.No.401 of 2012 on the file of the Judicial Magistrate, Fast Track Court No.I @ Magisterial Level dated 18.05.2015 as confirmed in Criminal Appeal No.131 of 2015 on the file of the I Additional District and Sessions Judge, Coimbatore, dated 08.03.2016.

For Petitioner : Mr.A.S.Baradhi
for Mr.J.R.Prabhakaran

For Respondent : No appearance

ORDER

This Revision has been filed to set aside the judgment passed in C.A.No.131 of 2015 on the file of the I Additional District and Sessions Judge, Coimbatore, dated 08.03.2016, thereby confirming the judgment passed in



CRL.R.C.No.123 of 2018

C.C.No.401 of 2012 on the file of the Judicial Magistrate, Fast Track Court

WEB COPY No.P@ Magisterial Level dated 18.05.2015, thereby convicted the petitioner

for the offence under Section 138 of Negotiable Instruments Act.

2. The revision petitioner is an accused in the complaint lodged by the respondent. The respondent lodged a complaint alleging that on 12.05.2011, the petitioner borrowed loan of Rs.5 lakhs from the respondent and he also executed a promissory note, undertake to pay the said loan amount with interest at the rate of 24% per annum. In order to repay the said loan amount he issued a cheque, when it was presented for collection and the same has been returned dishonored for the reason "funds insufficient". After causing statutory notice to the petitioner, the respondent lodged a complaint.

3. On the side of the respondent he was examined as PW1 and Exs.P1 to P5 were marked as exhibits and on the side of the petitioner no one was examined and no document was marked as exhibits.

4. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of NI Act, and sentenced him to undergo simple imprisonment of one year and also awarded



CRL.R.C.No.123 of 2018

compensation of Rs.4 lakhs. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the order of conviction by the trial Court. Hence the revision.

5. The learned counsel for the petitioner submitted that the said cheque was issued only for security purpose not for the loan availed by the petitioner. Therefore, there was no liability towards the petitioner to issue any cheque and the said cheque was misused by the respondent and filed a complaint for illegally enforced debt. However, there was no explanation for the cheque amount whether it was issued towards the principal amount or including the interest. Therefore, the respondent failed to prove the case and the Court below convicted the petitioner for the offence under Section 138 of NI Act.

6. This Revision has been filed in the year 2016 along with condone delay petition. After the delay was condoned by this Court, the Revision was numbered by the Registry. However, the petitioner failed to file any application to suspend the sentence imposed on him. The petitioner had taken adjournment from the year 2018 on two occasions, no one was present before this Court and the matter was listed for no representation. Thereafter, the matter was repeatedly adjourned for the past four years. However, the petitioner failed to



CRL.R.C.No.123 of 2018

argue the case in admission and no notice was issued to the respondent. On 22.09.2022, this Court ordered fresh notice to the respondent returnable by 13.10.2022 and the petitioner also permitted to issue private notice to the respondent. However, the petitioner did not take any steps to issue notice to the respondent and also failed to take steps to issue private notice. Therefore, this Court decided to pass orders on merits.

7. After receipt of statutory notice sent by the respondent, the petitioner did not even reply to the statutory notice. Further, he did not deny any issuance of cheque and the signature found in the cheque. Even while recording his statement under Section 313 Cr.P.C, he only denied the borrowal of loan and has not raised any issue of misuse of cheque by the respondent herein. Therefore, the petitioner failed to rebut the initial presumption which arises against him under Section 139 of NI Act. The total absence of oral and documentary evidence on the side of the petitioner, has failed to probablise his defence. The respondent also clearly established all the ingredients as contemplated under Section 138 of NI Act so as to hold the petitioner guilty under Section 138 of NI Act. Therefore, the Court below rightly convicted the petitioner and this Court, finds no infirmity or illegality in the orders passed by the Courts below. Hence, this criminal revision is liable to be dismissed.



CRL.R.C.No.123 of 2018

WEB COPY 8. Accordingly, the Criminal Revision case is dismissed. Consequently,
connected miscellaneous petition is closed.

13.10.2022

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Index : Yes / No

Speaking / Non Speaking order

To

1. The I Additional District and Sessions Judge,
Coimbatore
2. The Judicial Magistrate,
Fast Track Court No.I @ Magisterial Level,
Coimbatore.



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CRL.R.C.No.123 of 2018

G.K.ILANTHIRAIYAN, J.

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Crl.R.C.No.123 of 2018

13.10.2022