



Crl.RC.No.151 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

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

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K.S.Manoharan

... Petitioner/A2

Versus

M.Rajendran

... Respondent

PRAYER:

Criminal Revision has been filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the conviction imposed in the judgment dated 13.10.2017 made in CA.No.14 of 2017 on the file of the learned II Additional District and Sessions Judge, Tiruppur confirming the conviction imposed in judgment dated 04.01.2017 made in CC.No.9 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Tiruppur by allowing this criminal revision.



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For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.J.Franklin

ORDER

This criminal revision has been filed as against the judgment dated 13.10.2017 made in CA.No.14 of 2017 on the file of the learned II Additional District and Sessions Judge, Tiruppur thereby confirmed the judgment dated 04.01.2017 made in CC.No.9 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Tiruppur, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The case of the respondent is that the petitioner is one of the partners of the first accused partnership firm. They are doing construction and real estate business. While being so, the respondent entered into a construction agreement with the petitioner for construction of building on 17.12.2010. On the said date, the petitioner received a sum of Rs.5,00,000/- as an advance and thereafter on 25.12.2010, another sum of Rs.3,00,000/- was received as further advance for construction of building. However, the



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petitioner failed to complete the construction and as such, the respondent engaged another construction group and completed construction. Therefore, the respondent requested the petitioner to return the said amount with interest. In order to repay the advance amount along with interest, the petitioner issued a cheque for a sum of Rs.10,13,000/- on 09.03.2013. The said cheque was presented for collection and the same was returned dishonoured for the reason 'account closed'. After causing statutory notice, the respondent lodged complaint.

3. On the side of the respondent, he examined PW1 and PW2 and marked Ex.P1 to Ex.P9. On the side of the petitioner, he examined DW1 and DW2 and marked Ex.D1 to Ex.D8. On perusal of the oral and documentary evidence, the petitioner was found guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo one year rigorous imprisonment. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the judgment passed by the trial court.



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4. The learned counsel for the petitioner would submit that there is absolutely no evidence on record to prove that the disputed cheque was handed over to the respondent for legally enforceable debt. The initial burden of proof is always on the respondent, which he failed to discharge to the satisfaction of the court. The petitioner never entered into an agreement with the respondent for construction of building. The alleged cheque was handed over to DW2 for security purpose while borrowing a sum of Rs.50,000/-. After repayment of the entire amount, DW2 failed to return the cheque since the cheque was misplaced by him. To that extent, he also executed receipt in favour of the petitioner and the same was marked as Ex.D7.

4.1 He further submitted that no date was mentioned for the sum of Rs.5,00,000/- which was allegedly received by the petitioner for construction. The respondent being an auditor, except the agreement, no other documents were executed while paying such huge amount of Rs.8,00,000/-. Therefore, the respondent failed to prove his case as contemplated under Section 138 of NI Act.



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

6. On perusal of the records, revealed that the petitioner entered into a construction agreement with the respondent on 17.12.2010. On the same day, he received a sum of Rs.5,00,000/- as an advance and subsequently, he received another sum of Rs.3,00,000/- on 25.12.2010 as further advance for putting up construction. However, the petitioner failed to put up any construction and as such, the respondent engaged another builder and completed his construction. In order to return the said amount, the petitioner issued cheque for a sum of Rs.10,13,000/-. While it was presented for collection, the same was returned dishonoured for the reason “account closed”. The respondent caused statutory notice and the same was duly received by the petitioner. However, the petitioner failed to send any reply notice. Though the petitioner had taken specific stand that the alleged cheque was originally handed over to DW2 at the time of borrowal of Rs.50,000/-, after repayment of the said amount, DW2 failed to return the



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same for the reason that the cheque which was issued for security purpose was misplaced. Therefore, DW2 executed receipt which was marked as Ex.D7.

7. On perusal of Ex.D7, revealed that it was fabricated only to defend the proceedings initiated under Section 138 of NI Act. No one will give that kind of receipt on settlement of money. If at all the cheque was misplaced, the petitioner or DW2 ought to have lodged a complaint before the concerned police personnel. Neither the petitioner nor DW2 lodged complaint so far.

8. On perusal of Ex.P1, revealed that on the date of agreement dated 17.12.2010, the petitioner received a sum of Rs.5,00,000/- and subsequently on 25.12.2010 received another sum of Rs.3,00,000/-. Ex.P1 is the construction agreement. When the agreement itself was executed between the petitioner and the respondent, there is no question of other documents to be executed while receiving the amount. Even according to the respondent, it was advance for putting up construction by the petitioner.



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However, admittedly the petitioner failed to put up any construction and as such, the respondent engaged another builder to put up construction.

Therefore, the respondent discharged his initial burden as contemplated under Section 138 of NI Act. Though the said presumption can be rebutted, the petitioner failed to rebut the same and produced so many documents which are not at all relevant to the transaction between the respondent and the petitioner.

9. The statutory presumption drawn under Sections 118 and 139 of NI Act is not at all rebutted by the petitioner. The petitioner also never denied the signature found in the cheque. The statute mandates that once the signatures of an accused on the cheque are established, then the 'reverse onus' clause become operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed upon him by probable defence. Therefore, the petitioner failed to rebut the presumption discharged by the respondent herein. Further, though the petitioner had taken specific stand that the cheques were issued in favour of DW2 while borrowing loan to the tune of Rs.50,000/-, which were misplaced by him, no



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single suggestion was put before the respondent herein while his cross examination. It shows that it is only after thought and Ex.D7 was prepared to defend the case through DW2. Therefore, the courts below rightly convicted the petitioner for the offence under Section 138 of NI Act and this Court finds no infirmity or illegality in the order passed by the courts below and this criminal revision is liable to be dismissed.

10. At this juncture, the learned counsel for the petitioner submitted that as directed by this Court, already the petitioner deposited a sum of Rs.5,00,000/- and it is lying to the credit of trial court and he is ready and willing to pay the remaining amount within a period of one month.

11. Considering the above submission, if the petitioner settles the remaining amount to the respondent within a period of one month from today, the conviction imposed in the judgment dated 13.10.2017 made in CA.No.14 of 2017 on the file of the learned II Additional District and Sessions Judge, Tiruppur confirming the conviction imposed in judgment dated 04.01.2017 made in CC.No.9 of 2015 on the file of the learned



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Judicial Magistrate (Fast Track Court), Tiruppur shall stand to be set aside
in view of the judgment of the Hon'ble Supreme Court of India in the case
of *Ramgopal and others vs. The State of Madhya Pradesh reported in*
2021 (6) CTC 240.

12. With the above observation, this criminal revision is dismissed.

18.10.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned II Additional District and Sessions Judge,
Tiruppur
- 2.The learned Judicial Magistrate (Fast Track Court),
Tiruppur

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