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Crl.R.C.No.165 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

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

Crl.RC.No.165 of 2018

Rajendar Singh

....

Petitioner

Vs

S.S.Mohanraj

....

Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records pertaining to the Judgement dated 06.10.2017 passed in C.A.No.13 of 2016 by the III Additional District and Sessions Judge, Coimbatore, confirming the Judgment dated 18.01.2016 passed in C.C.No.301 of 2013 by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, set aside the same, allow this revision.

For Petitioner	: No appearance
For Respondent	: Mr.G.Vivekanand

ORDER

This Criminal Revision Case has been filed to set aside the Judgement dated 06.10.2017 passed in C.A.No.13 of 2016 by the III Additional District and Sessions Judge, Coimbatore, thereby confirming the Judgment dated 18.01.2016 passed in C.C.No.301 of 2013 by the Judicial Magistrate, Fast



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Track Court at Magisterial Level-II, Coimbatore, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

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 the petitioner borrowed a sum of Rs.4,00,000/- on 11.01.2011 as loan and also executed a promissory note in favour of the respondent and agreed to repay the loan, which was borrowed by him with interest at the rate of 12% per annum. However, the petitioner failed to pay the principal and interest. After repeated request, in order to repay the entire amount, the petitioner issued a cheque for a sum of Rs.4,60,000/- on 13.04.2012. When the cheque was presented for collection, it was returned for the reason 'account closed'. After causing statutory notice, the respondent filed a complaint for the offence punishable under Section 138 of Negotiable Instruments Act.

3. On the side of the respondent, he examined P.W.1 and marked Exs.P1 to P5. On the side of the petitioner, no one was examined and no document was marked.



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4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order of the conviction passed by the Trial Court was confirmed.

5. The petitioner raised grounds that the respondent failed to prove that there was existing liability in favour of him and the alleged cheque was issued only to discharge the said existing liability. The complaint itself is not maintainable, since there was no cause of action for the offence punishable under Section 138 of Negotiable Instruments Act. No statutory notice was caused to the petitioner as contemplated under Section 138 of Negotiable Instruments Act. The cheque was issued only in favour of one Sunil and the same was misused by the respondent, since there is no enforceable debt for the alleged cheque.



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6. On perusal of the promissory note revealed that on 11.01.2011, the petitioner borrowed a sum of Rs.4,00,000/- as loan. He also executed promissory note in favour of the respondent herein on the same day, which was marked as Ex.P1. He agreed to pay monthly interest at the rate of 12% per annum for the amount borrowed by him. However, the petitioner failed to pay any interest. Finally he issued cheque for a sum of Rs.4,60,000- including interest for the principal amount of Rs.4,00,000/-. When, it was presented for collection, the same was returned for the reason 'account closed', which was marked as Ex.P1. The respondent caused statutory notice dated 27.04.2012 and the same was marked as Ex.P4. It was returned as 'unclaimed' on 05.05.2012. Therefore, the Trial Court rightly construed the sufficient service and proceed with the trial. Though, the petitioner had taken specific stand that Ex.P2 was not issued in favour of the respondent for any legally enforceable debt, the petitioner failed to disprove the case of the complainant and failed to rebut the presumption as contemplated under Section 139 of Negotiable Instruments Act. In fact, the petitioner also failed to make any statement recorded under Section 313 of Cr.P.C to rebut the presumption. The legal notice was also issued to the correct address, which was shown in the complaint.



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7. On perusal of the returned cover, which was marked as Ex.P5, revealed that there is an endorsement 'duly served' on the petitioner. It shows that the said notice was sent to proper address and it was returned with an endorsement 'unclaimed'. Therefore, the respondent had established the requirements as contemplated under Section 138(b) of Negotiable Instruments Act. Though the presumption is in favour of the respondent, the same is a rebuttable presumption. However, the petitioner failed to repay the same. The standard of proof available for the defence side is preponderance of probability. It is not imperative on the accused to rebut the presumption by examining himself as witness. It would suffice if the accused is able to rebut the presumption from the materials available on the complainant side. In the case on hand, the petitioner had admitted his signature in Ex.P1 and P2. There was no denial with regard to issuance of cheque by reply notice or by giving any cogent reasons, the petitioner failed to rebut the presumption under Section 118 of the Negotiable Instruments Act.

8. Further, while suspending the sentence in Crl.M.P.No.1341 of 2018, this Court imposed condition to deposit 50% of the cheque amount. It was also not complied with by the petitioner.



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9. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Case stands dismissed.

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Index : Yes/No

Internet : Yes

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To

1.The III Additional District and Sessions Judge,
Coimbatore.

2. The Judicial Magistrate,
Fast Track Court at Magisterial Level-II, Coimbatore



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G.K.ILANTHIRAIYAN, J.

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