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CRL.R.C.No.179 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.179 of 2018

M.Muthukumarasamy

... Petitioner

Vs.

S.Santhi

... Respondent

Prayer: The Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to set aside the conviction imposed in the judgment dated 21.09.2017 made in C.A.NO.130 of 2016 on the file of the learned Second Additional District and Sessions Court, Tiruppur, confirming the conviction imposed in the judgment dated 08.11.2016 made in C.C.No.354 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruppur, by allowing the Criminal Revision Petition.

For Petitioner : Mr.C.Ramkumar

For Respondent : No appearance

ORDER

This Criminal Revision case has been filed to set aside the judgment dated 21.09.2017 made in C.A.NO.130 of 2016 on the file of the learned Second Additional District and Sessions Court, Tiruppur, confirming the

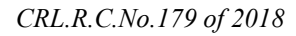
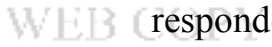


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conviction imposed in the judgment dated 08.11.2016 made in C.C.No.354 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court, Tiruppur.

2. The learned counsel for the petitioner would submit that already he handed over the entire bundle to the petitioner along with change of vakalat long back. Even then, the petitioner failed to engage any counsel to represent on behalf of him before this Court. That apart, this Court, while suspending the sentence imposed on the petitioner by an order dated 18.07.2018, imposed a condition that the petitioner shall deposit a sum of Rs.1,25,000/- to the credit of C.C.No.354 of 2015 on the file of the Judicial Magistrate, Fast Track Court, Tiruppur. So far, the petitioner did not complied with the said condition and did not even take any steps to send notice to the respondent, though, this Court, ordered fresh notice to the respondent.

3. Again, the matter was listed before this Court on 23.09.2022. This Court, ordered fresh notice to the respondent returnable by 13.10.2022 and also permitted the petitioner to take private notice on the petitioner. Even then the petitioner failed to take any steps to issue notice to the respondent and also failed to issue private notice. Therefore, this Court decided to pass orders on merits.



The crux of the complaint is that on 06.12.2011, the petitioner borrowed a sum of Rs.8,00,000/- as loan and agreed to repay the same with interest at the rate of 24% per annum. On the same day, the petitioner also executed Promissory Note for the said amount in favour of the respondent herein. In order to repay the borrowed amount, he issued cheque for a sum of Rs.5,00,000/- when it was presented for collection, the same was returned dishonored for the reason "funds insufficient". After causing statutory notice to the petitioner, lodged a complaint.

5. On the side of the respondent PW1 and PW2 were examined and Exs.P1 to P7 were marked as exhibits and on the side of the petitioner DW1 was examined and Exs.D1 and D2 were marked as exhibits.

6. On perusal of the oral and documentary evidence on either side, the trial Court found the petitioner guilty for the offence under Section 138 of NI Act, and sentenced him to undergo one year simple imprisonment with fine of Rs.1000/. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and confirmed the order of conviction by the trial



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Court. Hence, this Revision.

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7. The petitioner raised grounds that there was no legally enforceable debt to punish the petitioner for the offence under Section 138 of NI Act. The cheque was not issued for any consideration, since there was no legal obligation to issue any cheque. Both the Courts below failed to note that the petitioner lodged complaint as against the respondent and her husband on 18.09.2013 for the threat caused by the respondent. In the said complaint, the petitioner mentioned that the cheque and promissory note have been misused by the respondent which was given for security purpose. The said complaint was also marked as Ex.R1. Therefore, the petitioner clearly rebutted the evidence of the respondent as such, the conviction imposed by under Section 138 of NI Act, cannot be sustained as against the petitioner.

8. On perusal of records revealed that the petitioner borrowed a sum of Rs.8 lakhs on 06.12.2011, the petitioner also agreed to repay the same with interest at the rate of 24% per annum. He also executed promissory note in favour of the respondent. In order to repay the borrowed amount, the petitioner issued a cheque for a sum of Rs.5 lakhs. The said promissory note was marked as Ex.P1, the cheque was marked as P2, when it was presented for collection,



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the same was returned dishonored for the reason "funds insufficient".

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9. Though the petitioner issued reply notice, it failed to rebut the evidence of the respondent herein. That apart, though the petitioner lodged complaint which was marked as Ex.R1 and no FIR was registered on his complaint. Further, there was no proof to show that the petitioner lodged a complaint and the same was duly received by the concerned police station. Even assuming that the petitioner lodged a complaint on 18.09.2013, it is nothing but after issuance of cheque and promissory note. Therefore, the petitioner failed to rebut the evidence of the respondent. Therefore, the Courts below rightly passed the conviction order. This Court finds no infirmity or illegality in the orders passed by the Courts below and the criminal revision is liable to be dismissed.

10. Accordingly, the Criminal Revision case stands dismissed.

13.10.2022

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Index : Yes / No

Speaking / Non Speaking order



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To

1. The Second Additional District and Sessions Court,
Tiruppur.
2. The Judicial Magistrate, Fast Track Court,
Tiruppur.



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G.K.ILANTHIRAIYAN, J.
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