



Crl.R.C.No.467 of 2015
and M.P.No.1 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.07.2022

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.467 of 2015

and

M.P.No.1 of 2015

R.Karuppusamy

.. Petitioner

Vs.

M.Krishnamoorthy

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the entire records in so far relates to order passed in C.A.No.1 of 2014, dated 31.10.2014 on the file of the I Additional District and Sessions Court, Salem whereby confirming the order passed by the Judicial Magistrate (Fast Track), Omalur, Salem District in C.C.No.31 of 2013, dated 27.11.2013 and set aside the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.R.Thamarai Selvan



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ORDER

This Criminal Revision Case is filed against the concurrent findings of the Courts below holding the petitioner guilty of offence under Section 138 of Negotiable Instruments Act.

2. The sum and substance of the complaint against the petitioner is that the complainant and the petitioner are known to each other. To purchase the land, the petitioner borrowed a sum of Rs.5,00,000/- from the complainant and executed a pro-note after promising to repay it on demand. After repeated demand to discharge the said debt, the petitioner gave the subject cheque bearing No.781854 dated 03.12.2009 for Rs.5,00,000/- drawn from his bank account at Salem District Central Co-operative Bank Ltd., Tharamangalam. However when the cheque was presented, it was returned stating “Funds Insufficient”. On receiving the intimation from the bank on 15.12.2009, the statutory notice dated 30.12.2009 was served on the petitioner, who received the



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same on 06.01.2010 and failed to reply. Thereafter, a complaint has been filed under Section 138 of Negotiable Instruments Act.

3. To prove his complaint, the respondent has examined himself as PW.1 and marked five (5) documents as Ex.P1 to Ex.P5. The petitioner / accused not chosen to file any document and not examined any witness to rebut the presumption.

4. However, in the cross examination it has been suggested to the witnesses that the subject cheque was not given to the complainant, but a blank cheque handed over to the brother of the complainant as a security in connection with the supply of the fertilizer. The petitioner is working as a Secretary of the Society and for supply to its members he gave his personal cheque. Further it is also contended that the complainant have no source for advancing Rs.5,00,000/- as loan and no document filed to substantiate the source of income. The Courts below have considered those defence and declined to accept the same and held that the petitioner herein is liable to compensate the complainant a sum of



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Rs.3,50,000/- and also undergo imprisonment of Six Months S.I.

5. The learned counsel for the petitioner reiterated the defence of no proximity between the petitioner and the complainant. The cheque issued for security purpose has been misused and would submit that any transaction above Rs.20,000/- is bound to be through bank. However, in this case, the complainant states that he gave Rs.5,00,000/- in cash to the petitioner in his residence and except his family members, no other third party were present which is totally unbelievable and not supported by any evidence.

6. This Court finds that the signature in this cheque is not denied except the proximity and the purpose for which the cheque was given. Regarding the proximity though the petitioner claims that he is a stranger, the proven fact indicates that the petitioner was a Secretary in the Cooperative Society in the same village and for more than 10 years their family members are known to each other. Furthermore, it is admitted case of the petitioner that the brother of the complainant is known to him



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and he has transaction with him. While considering the alleged transaction with the brother of the complainant, it is regarding supply of fertilizer to the members of the Society and the case of the petitioner is that the subject cheque was given to the brother of the complainant as a security for supply of fertilizer, but the complainant's brother failed to supply the fertilizer.

7. The Courts below while considering this defence, had posed the question to itself that for the fertilizer supply to the members of the society, why the petitioner should give his personal cheque as security. For this question, there is no answer from the petitioner / accused. In the cross examination of the PW.1 / complainant he has specifically stated that the petitioner borrowed Rs.5,00,000/- for purchasing the land. To this, there is no contra evidence to disbelieve the statement. Rebuttal of statutory presumption though need not be proved beyond all reasonable doubts and preponderance of probability is sufficient. It is a simple fact that when the complainant claims that the money was borrowed for the purchase of land and if that statement is not correct, the petitioner should



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have disproved the case by rebutting. In such circumstances, this Court finds no reason to interfere with the finding of the Courts below regarding the conviction.

8. As far as the sentence is concerned, this Court taking note of the fact that the petitioner, who is a Secretary of the Co-operative Society and considering his status, this should hold it will be suffice to alter the sentence. Instead of imposing imprisonment, he may be directed to pay a compensation to the extent of the cheque amount. Accordingly, while confirming the conviction rendered by the Courts below, the sentence is modified to the effect that the accused shall pay a compensation of Rs.5,00,000/- to the complainant within a period of four (4) weeks from today; in default he shall undergo three months Simple Imprisonment.

9. In the result, *this Criminal Revision Case is partly allowed*. Consequently, the connected Criminal Miscellaneous Petition is



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Internet : Yes/No

Index: Yes/No

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To

1. The I Additional District and Sessions Court, Salem.
2. The Judicial Magistrate (Fast Track), Omalur, Salem District.

Dr.G.JAYACHANDRAN, J.

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