



Crl.R.C.No.311 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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

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R.Subramani

... Petitioner

Vs.

A.R.Bhoopathi

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order of the Appellate Court in C.A.No.223 of 2015 dated 11.10.2017 on the file of the Vth Additional District and Sessions Judge, Coimbatore District confirming the order of the Trial Court in C.C.No.186 of 2013 dated 29.09.2015 on the file of the Judicial Magistrate Fast Track Court at No.II, Coimbatore by allowing this revision.

For Petitioner : Mr.V.Chinnasamy

For Respondent : Mrs. A.Mary of Magthelen
for Mr.K.R.Ramesh Kumar



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ORDER

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This Criminal Revision case has been filed as against the Judgment passed in C.A.No.223 of 2015 dated 11.10.2017 on the file of the Vth Additional District and Sessions Judge, Coimbatore District, thereby confirming the Judgment passed in C.C.No.186 of 2013 dated 29.09.2015 on the file of the Judicial Magistrate Fast Track Court at No.II, Coimbatore, thereby convicting 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 is a Civil Contractor and he had done civil contract works in Arasur Village. The petitioner had borrowed a sum of Rs.4 lakhs from the respondent for his business purpose and agreed to repay the same with interest at the rate of 12% per annum, within a period of three months. On the date of borrowal, the petitioner also issued post dated cheque. Accordingly, the said cheque was presented for collection and the same was returned dishonored for the reason “Insufficient Funds”. Immediately, after



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causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, he examined P.W.1 to P.W.3 and marked Exs.P.1 to P.6. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.5,000/- as fine, in default to undergo two months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner raised grounds that the alleged cheque was issued for the purpose of security at the time of borrowal of loan. Therefore, there was no legally enforceable debt on the part of the petitioner. In fact, the respondent failed to mention any legally enforceable debt in Ex.P4 i.e., the legal notice and as such it cannot be



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said that the cheque was issued for discharging in whole or in part of any debt or other liability. The respondent also failed to file any agreement as if the petitioner agreed to repay the loan amount with interest at the rate of 12% per annum.

5. Heard, Mr.V.Chinnasamy, learned counsel appearing for the petitioner and Mrs. A.Mary of Magthelen, learned counsel appearing for the respondent.

6. A perusal of records revealed that the petitioner borrowed a sum of Rs.4 lakhs and issued post dated cheque, dated 06.03.2012. Thereafter, on instructions, the respondent presented the said cheque for collection and the same was returned dishonored for the reason “Insufficient Funds”. On returning the said cheque, the respondent caused statutory notice and the same was duly received by the petitioner and the acknowledgment card was marked as Ex.P5. In order to prove the same, the respondent also marked the bank account statement from 01.11.2011 to 30.10.2012, which was marked as Ex.P6. Therefore, the respondent



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discharged his burden as contemplated under Section 139 of Negotiable Instruments Act. However, it is rebuttable in nature. The respondent failed to rebut the same by probable evidence. He had taken only a stand that he had borrowed a sum of Rs.1 lakh and the alleged cheque was given for the purpose of security. The petitioner did not even examine anybody and nothing elicited in the cross examination of P.W.1 to disprove the case of the respondent.

7. In fact, the petitioner admitted his signature and issuance of cheque. On the date of presentation of cheque, there was legally enforceable debt and as such even assuming that the cheque was issued for the purpose of security, it can be presented for collection.

8. However, the learned counsel for the petitioner submitted that the petitioner had settled the amount to the tune of Rs.1 Lakh and he is ready and willing to settle the remaining amount, within a period of four weeks.



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9. Considering the above submission, this Court is inclined to set aside the conviction and sentence imposed on the petitioner by the Courts below. Accordingly, the Judgment passed in C.A.No.223 of 2015 dated 11.10.2017 on the file of the Vth Additional District and Sessions Judge, Coimbatore District, thereby confirming the Judgment passed in C.C.No.186 of 2013 dated 29.09.2015 on the file of the Judicial Magistrate Fast Track Court at No.II, Coimbatore are hereby set aside, on condition that the petitioner shall deposit the cheque amount, after deducting the amount which was already paid, on or before 23.12.2022 before the Trial Court, failing which, the conviction and sentence imposed on the petitioner by the Courts below, shall stand restored. On such deposit, the respondent is permitted to withdraw the amount by way of filing appropriate application. The Trial Court is directed to permit the respondent to withdraw amount, without ordering any notice to the petitioner.



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10. Accordingly, this Criminal Revision case stands allowed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

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

2. The Judicial Magistrate Fast Track Court at No.II, Coimbatore.

G.K.ILANTHIRAIYAN, J



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