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CRL.R.C.No.370 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2022

CORAM

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

Crl.R.C.No.370 of 2018

B.Jothimurugan

... Petitioner

Vs.

S.Gunasekar

... Respondent

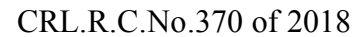
PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the conviction imposed in the judgment dated 25.01.2018 made in C.A.No.195 of 2017 on the file of the Learned I Additional District and Sessions Judge, Erode confirming the conviction imposed in judgment dated 16.06.2017 made in S.T.C.No.133 of 2016 on the file of the Learned Judicial Magistrate (Fast Track Court) No.1, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.A.V.Radhakrishnan

ORDER

This Criminal Revision case has been filed to set-aside the



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 on 21.01.2016, the petitioner borrowed a sum of Rs.2,00,000/- from the respondent for his personal needs. In order to discharge the said liability, the petitioner issued a dated cheque for a sum of Rs.2,00,000/- on 12.02.2016. On the basis of the instructions given by the petitioner, it was presented for payment on 22.03.2016. It was returned dishonored for the reason "Account stopped by drawer". After issuance of statutory notice, the respondent lodged a complaint.

3. On the side of the respondent, he was examined as P.W.1 and



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marked Exs.P1 to P4. On the side of the petitioner, D.W.1 and D.W.2 were examined and marked Exs.D1 to D4. On perusal of oral and documentary evidence, the Trial Court convicted the petitioner and sentenced him to undergo six months simple imprisonment and also awarded compensation of a sum of Rs.2,00,000/-. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner would submit that the cheque was issued for security purpose and there is no legally enforceable debt. Therefore, the petitioner rightly stopped the payment for the alleged cheque. There was no consideration for Ex.P1 and even then, both the Courts below wrongly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. Except the cheque, no other document was produced by the respondent to prove the case. The respondent also failed to produce any Income Tax returns, so that he has source to lend such huge money to the petitioner. Further, he submitted that the petitioner already suffered huge loss and as such he filed an



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insolvency petition before the II Additional Sub Court, Erode, to declare him as insolvent. Pending the insolvency petition, the respondent misused the cheque which was issued for security purpose and filed a complaint.

5. A perusal of records revealed that the petitioner borrowed a sum of Rs.2,00,000/- for his urgent needs and in order to repay the same, he issued a cheque. However, even before the presentation of cheque, he issued a letter to his banker to stop the payment on the cheque, which was marked as Ex.P1. Though, the petitioner stopped the payment, on the ground that the cheque was issued for security purpose, on the date of presentation of cheque, there was debt. Therefore, though the cheque was issued on the date of borrowal as security purpose, when the debt was very much in force, the said cheque can be presented for collection. Hence, the respondent discharged his initial burden as required under Section 138 of Negotiable Instruments Act, then the presumption under Section 139 of the Negotiable Instruments Act comes in favour of the respondent herein. However, it can be rebutted, the presumption attached to the cheque through probable defence or at least create a shadow of



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doubt on the cheque, that the cheque was not issued by the petitioner to the respondent in discharge of a legally enforceable debt payable by the petitioner herein. Therefore, the petitioner failed to rebut the evidence of the respondent. The legal notice was marked as Ex.P3 and the acknowledgment was marked as Ex.P4. After receipt of the legal notice caused by the respondent, the petitioner failed to reply to rebut the case of the respondent herein.

6. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and hence, this revision is liable to be dismissed.

7. Accordingly, this Criminal Revision case stands dismissed.

10.10.2022

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

mn

To

1. The I Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate (Fast Track Court) No.1, Erode.

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