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CRL.R.C.No.377 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.377 of 2018

C.Rajasekaran

... Petitioner

Vs.

K.Ravindran

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order passed by the learned XVIII Additional Sessions Judge, Chennai in C.A.No.212 of 2014 dated 07.09.2016 confirming the conviction and sentence imposed by the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai in C.C.No.3030 of 2011 dated 31.07.2014.

For Petitioner : Mr.G.Rajesh

For Respondent : Mr.S.Ganesh Kumar

ORDER

This revision is arising out of judgement dated 07.09.2016 passed in C.A.No.212 of 2014 on the file of the learned XVIII Additional Sessions Judge, Chennai, thereby confirming judgements passed by the



CRL.R.C.No.377 of 2018

WEB COPY

learned Metropolitan Magistrate, Fast Track Court-II, Egmore, Chennai, in C.C.No.3030 of 2011 dated 31.07.2014, thereby convicting the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act, (herein after called as "the NI Act").

2. The petitioner is an accused in the complaint lodged by the respondent. According to the respondent, the petitioner borrowed a sum of Rs.18,00,000/- and in order to repay the same, the petitioner issued a cheque and the same was presented for collection. However, it was returned dishonored as unpaid with an endorsement of payment stopped by the drawer. Immediately, after causing statutory notice, the respondent lodged complaint for the offence under Section 138 of the NI Act.

3. On the side of the respondent, he examined P.W.1 & P.W.2 and also marked documents as Ex.P.1 to Ex.P.8. On the side of the petitioner, no one was examined. However, he marked documents as Ex.D.1 to Ex.D.3. On a perusal of oral and documentary evidence, the trial Court found the petitioner guilty and sentenced him to undergo one year simple imprisonment and to pay compensation of Rs.18,00,000/-



CRL.R.C.No.377 of 2018

under Section 357(3) of Cr.P.C., in default to undergo further imprisonment of three months. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the judgment of the trial Court, as against which the present revision has been filed.

4. The learned counsel appearing for the petitioner submitted that the alleged cheque which was marked as Ex.P.2 was stolen by the respondent on 28.04.2010. In fact, on the same day the complaint was filed before the Inspector of Police, Orleanpet Police Station, and the petitioner was issued with C.S.R.No.34153 of 2010. However, the said complaint was not properly enquired and no FIR has been registered. Hence, the petitioner lodged private complaint and thereafter FIR has been registered in Crime No.226 of 2012 for the offences under Sections 147, 148, 150, 323, 324, 294, 447, 392, 506(ii) r/w 149 of IPC as against the accused persons and the investigation is still pending.

5. The respondent examined his Power of Attorney as P.W.1 and he himself examined as P.W.2. During the trial, P.W.2 categorically



CRL.R.C.No.377 of 2018

WEB COPY

admitted the lodgment of complaint for the occurrence took place on 28.04.2010. He further submitted that the petitioner as well as the respondent and another were partners of M/s.Seventh Sense Broadcasting Network Pvt. Ltd., Yali Marine Pvt. Ltd and Accanthus Pharma Pvt Ltd., and the said three business were registered under the Companies Act. While being so, the respondent and one Nilavan wanted to become directors of those companies by investing some amount and accordingly, they made application before the Registrar of Company.

5.1. At that juncture, when the proceedings were pending before the Registrar of Company, the respondent and the said Nilavan who were working in abroad came to Puducherry and demanded to settle their share, since they wanted to resign from the said business for their personal reasons. At that time, they trespass into the house of the petitioner and they stolen the cheque and other valuables. Therefore, Ex.P.2 was issued for no consideration.

5.2. He further submitted that in fact, in the complaint, the respondent had taken stand that the petitioner borrowed the entire amount of Rs.18,00,000/- and in order to repay the said amount, he



CRL.R.C.No.377 of 2018

WEB COPY

executed Ex.P.2. Whereas in the complaint lodged by P.W.1, who is the power agent of the respondent alleged that a sum of Rs.18,00,000/- was given towards purchase of land in their favour. After receipt of the entire money, the petitioner failed to purchase any land. Therefore, they lodged complaint before the Inspector of Police, DCB, Cuddalore and the said complaint was enquired and subsequently closed. Therefore, in both places, they were taken different stand and Ex.P.2 was not at all issued for legally enforceable debt. Unfortunately, the Courts below without considering the facts and circumstances mechanically convicted the petitioner for the offence punishable under Section 138 of the NI Act. He further submitted that except the relationship of hostile, the petitioner is no way connected with any transaction as alleged by the respondent and there was no liability on the part of the petitioner to issue the alleged cheque. Hence, he prayed for acquittal of the petitioner.

6. Heard, Mr.G.Rajesh, learned counsel appearing for the petitioner and Mr.S.Ganesh Kumar, learned counsel appearing for the respondent.



CRL.R.C.No.377 of 2018

WEB COPY

7. On a perusal of records revealed that according to the respondent, the petitioner borrowed a sum of Rs.18,00,000/- and executed Ex.P.2 When it was presented for collection, the same was returned with endorsement payment stopped. Therefore, he caused legal notice and lodged the complaint for the offence under Section 138 of the NI Act. Though, the petitioner replied by the reply notice, which was marked as Ex.P.7, subsequent to the counter claim, the petitioner failed to marked any piece of evidence before the trial Court.

8. The specific contention raised by the learned counsel appearing for the petitioner is that Ex.P.2 was stolen by the respondent on 28.04.2010 and on the same day he lodged complaint and after filing of private complaint, FIR was registered in Crime No226 of 2012 of the file of the Inspector of Police, Orleanpet Police Station. However, no document was produced before the trial Court to substantiate the said contention.

9. It is true that, the petitioner lodged complaint on 28.04.2010 and he was also issued C.S.R.No.34153 of 2010 on the same day by the



CRL.R.C.No.377 of 2018

WEB COPY

Inspector of Police, Orleanpet Police Station. However on registration of FIR, detailed enquiry was conducted and found that no such occurrence was taken place, since Ex.P.2 was issued in the month of March, 2010 dated 25.10.2010. Thereafter, the respondent went to Singapore along with his partner Nilavan. In the mean time, the petitioner cooked up a story and lodged complaint that the respondent and another trespassed into his house and stolen the Ex.P.2. After detailed enquiry, the said FIR was closed as mistake of fact.

10. In fact, on the closure report, the learned concerned Judicial Magistrate issued referred charge sheet to the petitioner and even after receipt of the same, the petitioner did not appear before that trial Court as such, the learned Magistrate accepted the closure report filed in Crime No.226 of 2012. It is also evident from the cross examination of P.W.2, in which he categorically deposed that the cheque was issued in the month of March, 2010 dated 25.10.2010.

11. Totally, the petitioner borrowed a sum of Rs.18,00,000/-. Though, in the complaint lodged by P.W.1 viz., the power agent of the



CRL.R.C.No.377 of 2018

WEB COPY

respondent alleged that the respondent paid the said sum of Rs.18,00,000/- to purchase property in their favour and subsequently, the petitioner failed to purchase any property and also refused to return the amount, the respondent lodged the present compliant under Section 138 of the NI Act. Therefore, the discrepancies would not affect the case of the respondent, since the petitioner never denied the signature found in the cheque.

12. Further, the case of the petitioner also disproved by the Police authority that cheque was never stolen by the respondent. Therefore, Ex.P.2 was duly issued by the petitioner and same was present for collection. Further, the petitioner did not even choose to mark the complaint dated 28.04.2010 and the FIR registered in Crime No.226 of 2012 before the trial Court, because after registration of the said FIR, the Investigation Officer conducted detailed enquiry and closed the FIR as mistake of fact. Though, the petitioner cross-examined P.W.2 with regard to lodgment of complaint by him, he did not mark the complaint as well as the FIR before the trial Court.



CRL.R.C.No.377 of 2018

WEB COPY

13. Further Ex.P.2 returned with endorsement stop payment given by the drawer of the cheque. The stop payment instruction was given by the petitioner, without the knowledge of the respondent. Therefore, the offence under Section 138 of NI Act, clearly attracts as against the petitioner. It is also seen that while suspending the sentence of the petitioner, this Court imposed condition that the petitioner shall deposit 1/3 of the cheque amount before the trial Court. However, the petitioner did not comply with the said condition so far.

14. If at all the petitioner wants to disprove the case of the respondent, he ought to have been examined himself as witness. However, he failed to examine himself as one of the witness. Therefore, the Courts below rightly convicted the petitioner for the offence under Section 138 of NI Act and this Court finds no infirmity or illegality in the order passed by the Courts below.

15. Accordingly, the Criminal Revision stands dismissed. The judgments of conviction and sentence passed by the Courts below are hereby confirmed. The trial Court is directed to take steps to secure the



CRL.R.C.No.377 of 2018

petitioner for the purpose of sentencing him to undergo the conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C.

13.10.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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CRL.R.C.No.377 of 2018

To

1. The XVIII Additional Sessions Judge,
Chennai.
2. The Metropolitan Magistrate,
FTC-II, Egmore,
Chennai



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CRL.R.C.No.377 of 2018

G.K.ILANTHIRAIYAN, J

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Crl.R.C.No.377 of 2018

13.10.2022