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Crl.R.C.No.428 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2022

CORAM:

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

Crl.R.C.No.428 of 2018

R.Murugesan

... Petitioner

Vs.

G.Arthanareeswaran

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records and to set aside the Judgment and conviction passed by the learned Judge on the II Additional District & Sessions Court at Erode in Crl.Appeal No.27 of 2017 on 23.08.2017 as well as the Judgment and conviction passed by learned Judicial Magistrate, Fast Track Court No.II, in Erode in STC.No.266 of 2014 on 26.12.2016 and to revise the same and acquit the petitioner/appellant/accused herein.

For Petitioner : Mr.P.Murali

For Respondent : Mr.N.Manokaran



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ORDER

This Criminal Revision case has been filed to set aside the Judgment and conviction passed by the learned Judge on the II Additional District & Sessions Court at Erode in Crl.Appeal No.27 of 2017 on 23.08.2017 as well as the Judgment and conviction passed by learned Judicial Magistrate, Fast Track Court No.II, in Erode in STC.No.266 of 2014 on 26.12.2016, thereby convicted 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. The crux of the complaint is that the respondent supplied goods to the respondent to the tune of Rs.5,05,598/-. In order to discharge the said liability, the petitioner issued a cheque and the same was presented for collection. However, it was returned dishonoured for the reason “Insufficient Funds”. After causing legal notice, the respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act.



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3. On the side of the respondent, he was examined as P.W.1 and P.W.2 was also examined and marked Exs.P1 to P19. On the side of the petitioner, no one was examined and no document was marked. On perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and sentenced him to undergo one year simple imprisonment and also ordered compensation of a sum of Rs.5,000/-, in default, to undergo three months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed, confirming the order passed by the Trial Court.

4. The learned counsel for the petitioner raised grounds that the respondent failed to prove his case as contemplated under Section 138 of Negotiable Instruments Act. Though, the respondent alleged that the cheque was issued in order to discharge the liability of purchase of goods, no document was produced to prove the same. He failed to file any corresponding delivery Note/Challan to corroborate the transfer of goods from the respondent to the petitioner. Therefore, the cheque was not issued for any legally enforceable debt.



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5. A perusal of records revealed that the respondent supplied goods to the tune of Rs.5,05,598/-. In order to discharge the said liability, the petitioner issued cheques which were marked as Ex.P4 and Ex.P5. The respondent also marked the documents which were connected to the commercial taxes in respect of his business as Exs.P11 to P13. He also produced invoices account filed in the year 2013 to 2014, which were marked as Ex.P14 and Ex.P15 to substantiate the claim of the respondent herein. The respondent also marked income tax returns for the year 2013-2014, which was marked as Ex.P16. Therefore, the respondent proved his case as contemplated under Section 138 of Negotiable Instruments Act, since the petitioner never denied the issuance of cheque and never disputed the signature found in the cheque.

6. Therefore, the respondent proved his initial burden as contemplated under Section 138 of Negotiable Instruments Act. Though, the petitioner can rebut the presumption, he failed to rebut the presumption by any probable evidence. In fact, after receipt of the legal notice, the petitioner did not even reply for the statutory notice caused by



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the respondent herein. That apart, while suspending the sentence, this Court imposed a condition to deposit 50% of the cheque amount. Even till today, the petitioner failed to comply with the same and the petitioner is enjoying the order of suspension of sentence.

7. Therefore, this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

8. Accordingly, this Criminal Revision case stands dismissed.

14.10.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
mn

To

- 1.The II Additional District & Sessions Court,
Erode.
- 2.The Judicial Magistrate, Fast Track Court No.II,
Erode.

G.K.ILANTHIRAIYAN. J.



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