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Crl.RC.Nos.490 & 493 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

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

Crl.RC.Nos.490 & 493 of 2018

Crl.RC.No.490 of 2018

R.Krishnamurthi ... Petitioner/accused

Versus

M.Babu ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records in CA.No.30 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri and to set aside the order dated 20.02.2018 confirming the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate(FTC), Dharmapuri dated 29.11.2016 made in STC.No.35 of 2013.

For Petitioner : Mr.M.Sudhan

For Respondent : No appearance
(Not ready in notice)

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R.Krishnamurthi

... Petitioner/accused

Versus

S.Suseendaran

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to call for the records in CA.No.31 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri and to set aside the order dated 20.02.2018 confirming the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate(FTC), Dharmapuri dated 29.11.2016 made in STC.No.34 of 2013.

For Petitioner : Mr.M.Sudhan

For Respondent : No appearance
(Not ready in notice)

COMMON ORDER

The criminal revision in Crl.RC.No.490 of 2018 is filed against the judgment dated 20.02.2018 passed in CA.No.30 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri, thereby confirmed the judgment dated 29.11.2016 in STC.No.35 of 2013 on the file of the learned Judicial Magistrate(FTC), Dharmapuri, thereby convicted the



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petitioner for the offence punishable under Section 138 of NI Act. The criminal revision in Crl.RC.No.493 of 2018 is filed against the judgment dated 20.02.2018 passed in CA.No.31 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri, thereby confirmed the judgment dated 29.11.2016 in STC.No.34 of 2013 on the file of the learned Judicial Magistrate(FTC), Dharmapuri, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. In respect of Crl.RC.No.490 of 2018, the petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The crux of the complaint is that the petitioner borrowed a sum of Rs.4,50,000/- on 01.07.2012 and issued cheque for the said sum dated 01.08.2012 on the same day. On instruction, it was presented for collection and the same was returned dishonoured for the reason 'stopped payment' on the direction by the petitioner. Therefore, the respondent caused statutory notice dated 25.08.2012 and the same was returned without being served. Therefore, again he sent another notice dated 11.09.2012 and the same was also returned. Hence, the complaint.



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2.1 In respect of Crl.RC.No.493 of 2018, the petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The crux of the complaint is that the petitioner borrowed a sum of Rs.3,50,000/- on 01.07.2012 and issued cheque for the said sum dated 01.08.2012 on the same day. On instruction, it was presented for collection and the same was returned dishonoured for the reason 'stopped payment' on the direction by the petitioner. Therefore, the respondent caused statutory notice dated 25.08.2012 and the same was returned without being served.

3. In respect of Crl.RC.No.490 of 2018, on the side of the respondent, he examined PW1 to PW3 and marked Ex.P1 to Ex.P6. On the side of the petitioner, he was examined as DW1 and no documents were marked. On perusal of oral and documentary evidence, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced to undergo one year simple imprisonment and also awarded compensation of Rs.4,50,000/-. Aggrieved by the same, the petitioner



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preferred appeal and the same was also dismissed and confirmed the conviction rendered by the trial court. In respect of Crl.RC.No.493 of 2018, on the side of the respondent, he examined PW1 to PW4 and marked Ex.P1 to Ex.P8. On the side of the petitioner, he was examined as DW1 and no documents were marked. On perusal of oral and documentary evidence, the trial court found the petitioner guilty for the offence punishable under Section 138 of NI Act and sentenced to undergo one year simple imprisonment and also awarded compensation of Rs.3,50,000/-. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the conviction rendered by the trial court.

4. In respect of Crl.RC.No.490 of 2018, the learned counsel for the petitioner would submit that the first statutory notice dated 25.08.2012 was not at all served on the petitioner and it was not at all informed to the petitioner by the postman. However, again the respondent sent the very same notice dated 11.09.2012 and it was also not served on the petitioner. Simply the postman recorded that intimation delivered to the addressee and returned the same. He ought to have kept the post for minimum seven days so that the



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addressee can receive the same whenever available in his residence. In the case on hand, the postman, within three days, returned to the sender.

4.1 He further submitted that the complaint was filed by two persons. It is also evident from the complaint that there was cut and paste, in which the petitioner's name was only altered in the complaint. It shows that there was absolutely no legally enforceable debt for issuance of cheques. The respondent admitted that he conducted chit and at the time of taking the chit amount, both the cheques were received for security purpose. Thereafter, both the cheques were misused by the complainant and presented the same. In fact, in another complaint, the respondent in Crl.RC.No.493 of 2018 marked Ex.P7 i.e. notice allegedly sent by the petitioner to the respondent. Though the petitioner categorically denied the said notice, it was not issued on his instruction. Without considering those aspects, the courts below convicted the petitioner for the offence punishable under Section 138 of NI Act. He further submitted that the respondent has no source of income to lend such huge amount and the respondent failed to prove the source of income and he also did not even file any income tax returns to prove his income.



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5. Heard, the learned counsel for the petitioner.

6. On perusal of records, revealed that the petitioner borrowed a sum of Rs.4,50,000/- and Rs.3,50,000/- respectively. On the date of the borrowal of the amount, he issued post dated cheque in order to repay the said amount. On instruction, it was presented for collection. However, it was returned for the reason 'stopped payment'. Therefore, the respondent caused statutory notice dated 25.08.2012, which was returned with endorsement 'left' on 28.08.2012. Therefore, the respondent had sent the same notice for the second time on 11.09.2012, which was returned with endorsement that intimation delivered to the petitioner. The said returned cover was marked as Ex.P6. Therefore, the respondent discharged his initial presumption as required under Sections 118 and 139 of NI Act.

7. Though the petitioner raised ground that the respondent had no source of income to lend such a huge amount, the petitioner failed to issue any reply notice questioning the source of income. In fact, he also did not make any statement under Section 313 of Cr.P.C. before the trial court.



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Therefore, the petitioner failed to rebut the presumption by probable defence.

As such, the courts below rightly convicted the petitioner and this Courts finds no infirmity or illegality in the orders passed by the courts below.

8. Accordingly, both the criminal revisions are dismissed and 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 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.

01.11.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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G.K.ILANTHIRAIYAN. J,

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To

- 1.The learned Additional District and Sessions Judge,
Dharmapuri
- 2.The learned Judicial Magistrate(FTC),
Dharmapuri

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