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Crl.R.C.No.50 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.50 of 2018

S.Venkateswaran

... Petitioner

Vs.

1.R.Ravikumar (died)

2.Kavitha

3.Minor Girish

represented by mother and natural guardian

Kavitha

4.Sivagami

[The Respondents 2 to 4 are impleaded as
per order in C.M.P.No.75 of 2017 dated 12.10.2017] ... Respondents

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the judgment and conviction dated 21.12.2017 made in C.A.No.131 of 2016 on the file of II Additional District and Sessions Judge, Erode confirming the judgment dated 23.11.2015 made in S.T.C.No.355 of 2014 on the file of Judicial Magistrate (F.T.C.No.I), Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondents : Mr.I.C.Vasudevan



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ORDER

This Criminal Revision case has been filed to set-aside the judgment and conviction dated 21.12.2017 made in C.A.No.131 of 2016 on the file of II Additional District and Sessions Judge, Erode confirming the judgment dated 23.11.2015 made in S.T.C.No.355 of 2014 on the file of Judicial Magistrate (F.T.C.No.I), Erode.

2. The petitioner is an accused in the complaint lodged by the respondents. The crux of the complaint is that on 14.03.2014, the petitioner borrowed a sum of Rs.7,00,000/-. In order to repay the same, the petitioner issued a cheque. The said cheque was presented for collection and the same was returned dishonor for the reason “Funds Insufficient”. Immediately, after causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, the first respondent was examined as P.W.1 and marked Exs.P.1 to P.10. On the side of the petitioner, no one was examined and no document was marked. On



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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 six months simple imprisonment and also awarded compensation for a sum of Rs.5,000/-, in default, undergo fifteen days 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 would submit that the complainant died and his legal heirs are impleaded as respondents herein. The respondent had no need to lend such a huge amount of Rs.7,00,000/. The respondent failed to produce any evidence to show that the petitioner borrowed a sum of Rs.7,00,000/- on 14.03.2014, except the cheque. He failed to produce any income tax returns to account the money which was allegedly borrowed by the petitioner herein. Though, the petitioner signed the cheque, he never filled the cheque and never instructed to present the cheque for collection since there was absolutely no legally enforceable



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debt and the cheque was not for any consideration. The respondent is liable to bring home the guilt of the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. He is bound to discharge the initial burden caused upon him that the cheque was given by the petitioner in discharge of a legally enforceable debt. The alleged cheque was issued for security purpose and as such the petitioner is not liable to be punished for the offence punishable under Section 138 of Negotiable Instruments Act.

5. A perusal of records revealed that the first respondent was examined as P.W.1 and marked Exs.P1 to P.10. Though, the petitioner raised grounds that the Ex.P.1 was not issued for any legally enforceable debt, he failed to adduce any evidence to disprove the case of the respondents herein. P.W.1/deceased categorically admitted that the petitioner used to borrow loan from him and at the time of borrowal of loan, he issued cheque for security purpose. However, even after repayment of the entire loan amount, the deceased/defacto complainant refused to return the same and presented the cheque for collection without



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any legally enforceable debt. However, the petitioner failed to produce any document to show that the cheque was issued as security purpose. In fact, no one was examined on behalf of the petitioner to rebut the case of the respondent herein. When the issuance of cheque itself is the presumption in favour of the respondent herein, it is the duty of the petitioner to rebut the same. In fact, the petitioner received a notice which was caused as contemplated under Section 138 of Negotiable Instruments Act, by the respondent and failed to reply to rebut the case of the respondent herein. Further, the petitioner made a statement under Section 313 of Cr.P.C., in which also he never denied the issuance of cheque and the signature found in the cheque.

6. Therefore, both the Courts below rightly found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and this Court finds no infirmity or illegality in the orders passed by the Courts below. However, if the petitioner settled the entire cheque amount to the respondents, it is open to the petitioner to file appropriate petition before this Court to set aside the conviction.



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7. Accordingly, this Criminal Revision case stands dismissed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
mn

To

1. The II Additional District and Sessions Judge, Erode.

2. The Judicial Magistrate (F.T.C.No.I), Erode.



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G.K.ILANTHIRAIYAN, J

mn

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