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Crl.RC.No.506 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HON'BLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.506 of 2018

L. Srinivasan

...

Petitioner

Vs

R. Jayaprakash

...

Respondent

Prayer : Criminal Revision filed under Sections 397 and 401 Cr.P.C., praying to set aside the conviction imposed in the Judgment dated 20.02.2018 made in C.A.No.268 of 2017 on the file of the learned Principal Sessions Court, Erode, confirming the conviction imposed in Judgment dated 19.07.2017 made in S.T.C.No.20 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court No.II), Erode by allowing this Criminal Revision Petition.

For Petitioner : Ms.P.Abinaya
for Mr.M.Guruprasad
For Respondent : Mr.M.Mohammed Hamza Ameer
for Mr.S.Veeraraghavan

ORDER

This Criminal Revision Case has been filed challenging the Judgment dated 20.02.2018 passed in C.A.No.268 of 2017 on the file of the Principal Sessions Court, Erode, thereby confirming the conviction imposed by the Trial



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Court in S.T.C.No.20 of 2015 dated 19.07.2017 thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act and sentenced him to undergo simple imprisonment for a period of one year and and also to pay a sum of Rs.5,000/- as fine.

2. Heard, the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

3. The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instrument Act, alleging that on 26.10.2013, the petitioner borrowed a sum of Rs.5,00,000/- for his urgent expenses, in order to discharge his liability issued cheque and the same was presented for collection. However, the cheque was returned as “Funds Insufficient”. After causing statutory notice, the respondent filed a complaint.

4. On the side of the respondent, he was examined as P.W.1 and marked Exs.P1 to P7 and on the side of the petitioner, he examined D.Ws.1 to 3 and marked Exs.D1 to D4.

5. On a perusal of the oral and documentary evidence, the Trial Court



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found him guilty and convicted for the offence punishable under Section 138 of Negotiable Instrument Act. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed thereby the order of the Trial Court was confirmed.

6. The learned counsel for the petitioner would submit that there is absolutely no evidence to prove that the disputed cheque was handed over to the respondent herein. There was absolutely no transaction as alleged by the respondent. On the alleged borrowal dated 26.10.2013, when the respondent lends the said huge amount of Rs.5,00,000/- except the cheque no other documents were executed in favour of the respondent. It is unbelievable and there is no mention about the transaction between the petitioner and the respondent. The alleged cheque was taken by one Balaji since he used to shift the shop and handed over to the respondent and the same was presented for collection without any legally enforceable debt. In support of his contention he examined D.Ws. 1 to 3 and marked Exs.D1 to D4. She further submitted that the respondent, in his cross examination, had categorically admitted that he failed to obtain any documents at the time of lending the money from the petitioner and also he failed to produce any documents with regard to the transaction between the petitioner and the respondent herein.

7. A perusal of the records reveals that the petitioner borrowed a sum



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of Rs.5,00,000/- on 26.10.2013. In order to discharge the said liability he issued cheque, which was marked as Ex.P1. He not only denied his signature but also denied the issuance of cheque, since according to him, the cheque was stolen by one Balaji and the same was misused by the respondent herein. Without a legally enforceable debt, to punish the same, the petitioner never produced an iota of document to disprove the case of the respondent herein. Infact, the petitioner did not lodge any complaint as against the said Balaji for stealing the cheque. Even after receipt of the summons from the Trial Court in the proceedings of 138 of Negotiable Instrument Act, the respondent deposed that he had acquittance with the petitioner for the past 10 years and that there was transaction between them.

8. The learned counsel for the petitioner would submit that the notice, which was marked as Ex.P3 was not at all served on the petitioner.

9. A perusal of Ex.P3 notice it is seen that it was addressed to Mohan Kumaramangalam Street, Surampatti, Erode, though the petitioner stated that he is not residing in the said address and he resides at No.13/66, Mudhali Thottam, Periyasemur, Erode. He admitted the very same address mentioned in Ex.P7, the acknowledgement for receipt of the notice. Hence, it is clear that



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the statutory notice was duly served on the petitioner. Therefore, the respondent clearly proved his case and the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

10. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this Criminal Revision Case stands dismissed.

29.09.2022

Index: Yes/No
Speaking / Non Speaking Order

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To

1.The Principal Sessions Judge,
Erode,

2. The Judicial Magistrate
(Fast Track Court No.II),
Erode

G.K.ILANTHIRAIYAN, J



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