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Crl.R.C.No.1434 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1434 of 2016
and
Crl.M.P.Nos.12488 & 12652 of 2016

N. Mani

... Petitioner

Vs.

C. Selvakumar

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to call for the records relating to the order in C.A.No.48 of 2015 dated 09.09.2016 by the learned Principal Sessions Judge, Namakkal confirming the order of the learned Judicial Magistrate, Tiruchengode dated 18.11.2015 in STC.No.46 of 2015 and set aside the same.

For Petitioner : Mr.K.A.Mariappan

For Respondent : Mr.S.Viswanathan



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ORDER

This Criminal Revision Case is filed by the accused who suffers concurrent finding by the Courts below in the complaint initiated against him under Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that a sum of Rs.5 lakh was borrowed by the petitioner and he executed a pro-note dated 20.09.2013 and agreed to pay the money with interest. On 23.09.2014, a cheque was issued to discharge the debt and the pro-note was returned. However, the said cheque on presentation, bounced without sufficient funds. Hence, after causing statutory notice, complaint under Section 138 of Negotiable Instruments Act has filed.

2(i). The petitioner herein, in response to the statutory notice gave a reply contending that the cheque was not issued to the petitioner and it was given to one Rathinam and Muthusamy who had misused the same. There is no privity of contract between the complainant and the petitioner and there is no enforceable liability.

2(ii). When the matter was taken up for trial and the petitioner in the



witness box, admitted in the cross examination that the cheque was issued as a security, whereas the loan borrowed from the complainant was discharged with interest. However, the cheque given as security being misused. Finding that the contradiction in the case of the defence, Courts below held the petitioner / accused guilty.

3. In the revision, it is contended that having discharged the initial burden that there is no enforceable debt, the complainant ought to have proved the case. Whereas, the Courts below had erred in convicting the petitioner. Further, it is also contended that the pending proceedings, the petitioner has filed an Insolvency Petition and therefore, the criminal complaint against him for non-payment of debt ought to have been dismissed.

4. This Court, on considering the averments raised in the grounds of revision and the judgments of the Courts below finds that the contention of the petitioner regarding discharge of debt and discharge of burden of proving innocence through Exs.A1 to A6 and D.W.1 to D.W.3 are not



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sufficient to probabilise the defence. The petitioner initially had denied any transaction with the complainant. Later admits transaction and issuance of cheque but denies liability. In addition, also takes umbrage under Insolvency Petition filed against him.

5. Having admitted the signature found in the cheque and the money transaction, the discharge of the liability has to be proved by the accused. Whereas, in this case none of the documents relied by the petitioner indicates that petitioner has repaid the amount which is admittedly borrowed from the complainant.

6. In the said circumstances, this Court finds no error or illegality in the judgment of the Courts below. Hence, the Criminal Revision Case stands is dismissed, by confirming the judgments of the Courts below. Consequently, connected miscellaneous petitions are closed.

11.10.2022

AT
Index : Yes/No
Speaking / Non-speaking

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To

1.The Principal Sessions Judge, Namakkal.

2.The Judicial Magistrate, Tiruchengode.



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Dr.G.JAYACHANDRAN,J.

AT

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