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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

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THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.92 of 2016

B.Anandan
Proprietor of Mars Consumer Products,
No.4/1-280, Idayanalloor Village,
Hosur Cattle Farm Post,
Hosur Taluk,
Krishnagiri District.

... Petitioner/Accused

Vs.

Thiru Anandaraj

... Respondent/Complainant

Criminal Revision Case filed under Section 397 & 401 of Cr.P.C., praying to set aside the judgment of convicting the appellant under Section 138 r/w 142 of Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for the period of 6 months and pay a fine of Rs.6,10,000/- in default to undergo Simple Imprisonment of 1 month in S.T.C.No.176/2011 dated 28.11.2012 passed by the learned Judicial Magistrate, Fast Track Court, Hosur and the same was confirmed in Crl.A.No.3 of 2013 dated 25.11.2014 passed by the learned Additional District and Session Judge, Hosur, Krishnagiri District.

For Petitioner : Mr.S.Manoharan

For Respondent : Mr.R.Purushothaman

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, dated 25.11.2014 passed in C.A.No.3 of 2013, confirming the judgment of the learned Judicial Magistrate, Fast Track Court, Hosur, dated 28.11.2012 passed in S.T.C.No.176 of 2011.



2. The Revision Petitioner before this Court was the accused before the trial Court.

3. This case has arisen out of the private complaint given by the respondent/complainant on the allegations that the petitioner had availed a loan of Rs.6,00,000/- from him on 30.09.2010 and towards discharging the said loan, he issued a post dated cheque dated 30.12.2010; when the cheque was presented for collection, it returned as 'Funds insufficient'; after having issued a mandatory legal notice and complied the legal mandates, complainant has filed a complaint against the revision petitioner/accused for punishing him for the offence under Section 138 r/w. 142 of the Negotiable Instruments Act. After the case was taken on file, the accused was questioned for the commission of the offence under Section 138 of N.I. Act. He pleaded innocence and claimed to be tried, hence, the trial was conducted.

4. On the side of the complainant, 1 witness was examined as P.W.1 and 6 documents were marked as Exs.P1 to P6. When the incriminating materials surfaced in the evidence of the complainant was put to the accused under Section 313 Cr.P.C., the accused denied the same. On the side of the accused, 2 witnesses were examined as D.W.1 & D.W.2 and 5 documents were marked as Exs.D1 to D5.

5. At the conclusion of the trial and on considering the evidence available on record, the accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced to undergo 6 months Simple Imprisonment and was also ordered to pay a compensation of Rs.6,10,000/- to the complainant, in default to undergo 1 month Simple Imprisonment. The Criminal Appeal preferred by the accused challenging the above said judgment was also dismissed on 25.11.2014. Aggrieved over that, the petitioner/accused has preferred this present Revision Case.

6. Heard the learned counsel for the petitioner/accused and the learned counsel for the respondent/complainant.

7. The learned counsel for the petitioner/accused submitted that the complainant was not known to the petitioner and he had no transaction with him; he only availed 3 loans of Rs.50,000/- each from one Thiyagarajan; subsequently, he entered into a sale transaction with the said Thiyagarajan to sell one of his properties to him for a sale consideration of Rs.2,50,000/-; the



three loans availed by him from Thiagarajan was set off against the sale consideration; while availing the loan from Thiagarajan, he has given a cheque to him as a security but it seems that the cheque was later misused by the complainant who is the friend of the said Thiagarajan. The petitioner/accused has stated all these facts in his reply notice; there is no other materials available to prove that the complainant has lent a sum of Rs.6,00,000/- to him; in fact, on 29.09.2010, the petitioner/accused was not available in Hosur and he had been to Tirupati to attend a marriage held on 29.09.2010 and he stayed there till 30.09.2010; he has also produced the records to show the same and hence, the alleged loan transaction is not true.

8. The learned counsel for the respondent/complainant submitted that the petitioner/accused did not deny his signature on the cheque and hence, the initial presumption as to its liability would go in his favour; with regard to the sale agreement with one Thiagarajan, a suit for specific performance has been filed and that was decreed; however, the petitioner/accused has challenged the decree by stating that he had not executed any sale agreement with the said Thiagarajan; further, in the reply notice sent by the petitioner/accused, he has not stated anything as to his non-availability in Hosur on 30.09.2010 and that he had attended a marriage at Tirupati; the learned trial Judge as well as the Appellate Judge have rightly appreciated the evidence on record and found the accused guilty.

9. Point for consideration :-

Whether the finding of the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act by the learned Judicial Magistrate, based on the materials available on record is fair and proper?

10. Despite the petitioner/accused has stated that the complainant is not known to him, the fact that the impugned cheque contains his signature is not denied. Once the signature in the cheque is admitted, the initial presumption that the cheque is issued to its holder for a legally enforceable debt or liability should be taken as per Section 118 r/w. 139 of N.I. Act. However, the initial presumption is subject to rebuttal proof if any, offered by the petitioner/accused.



11. In the case in hand, the learned counsel for the petitioner has stated that the petitioner/accused had loan transaction with one Thiagarajan and the complainant is not at all known to him. Even as per his own contention, he had settled the loan availed from Thiagarajan. However, he has not taken any steps to get back the cheque which he alleged to have given to him as a security.

12. It is submitted by the learned counsel for the respondent that on the basis of the sale agreement on which the alleged loans availed by the petitioner/accused got discharged, was challenged by the very same petitioner before the Civil Court. Whatever may be the contention of the petitioner/accused with regard to the alleged sale agreement, the fact remains that he has not established before the Court that the transactions which he had with one Thiagarajan, has got any relevance to the impugned cheque or the alleged transaction he had with the complainant.

13. The petitioner/accused has further submitted that he was not available at Hosur on 30.09.2010, the loan is said to have been availed from the respondent/complainant.

14. To substantiate the above said fact, he had produced Exs.D1 to D4 documents which are temple receipts of Thirumala-Tirupati and hotel receipts (Exs.D3 & D4). However, the petitioner has not stated about these facts in his reply notice - Ex.D5. Even if Exs.D1 to D4 are taken to be true, it is always possible for anyone to reach from Tirupati to Hosur on the same day and the loan transaction could have happened even thereafter.

15. It is not the case of the petitioner/accused that the complainant did not have financial wherewithals to lend a huge loan of Rs.6,00,000/-. With a defence evidence on record, the initial presumption that has already arisen in favour of the complainant, did not get rebutted. Under such circumstances, it is right for the trial Court and the Appellate Court to consider the evidence of the complainant as conclusive proof of the transaction and held the accused guilty for committing the offence under Section 138 of N.I. Act. In my opinion, the judgment of the Courts below does not require any interference.



In the result, this Criminal Revision Case is dismissed and the judgment of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, dated 25.11.2014 passed in C.A.No.3 of 2013 is confirmed.

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SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

- 1.The Additional District and Sessions Judge,
Hosur, Krishnagiri District.
- 2.-Do- Thro The Principal Sessions Judge,
Hosur, Krishnagiri District.
- 3.The Judicial Magistrate,
Fast Track Court, Hosur.
- 4.-Do- Thro The Chief Judicial Magistrate,
Hosur.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.92 of 2016

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srg 04/03/2022