



Crl.RC.No.600 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

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

Crl.RC.No.600 of 2018 and
Crl.MP.No.6961 of 2018

P.Ponnusamy

... Petitioner

Versus

P.Gowrisankar

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397(1) r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 27.03.2018 passed in CA.No.237 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the judgment dated 01.09.2017 passed in STC.No.143 of 2015 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode by allowing the present criminal revision petition.

For Petitioner : Mr.I.C.Vasudevan



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For Respondent : No appearance

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ORDER

This criminal revision has been filed against the judgment dated 27.03.2018 passed in CA.No.237 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the judgment dated 01.09.2017 passed in STC.No.143 of 2015 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and also awarded compensation of Rs.2,00,000/-.

2. Heard, the learned counsel for the petitioner.

3. The respondent lodged complaint alleging that the petitioner borrowed a sum of Rs.2,00,000/- from the respondent and in order to return the said amount, he issued cheque and the same was presented for collection, which was returned dishonoured for the reason “funds insufficient”. After causing legal notice, he lodged complaint. On the side of the respondent, he examined PW1 and marked Ex.P1 to Ex.P5.



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4. On the side of the petitioner, examined DW1 and no documents were marked. On the side of the respondent, he was examined as PW1 and Ex.P1 to Ex.P5 were marked. On perusal of oral and documentary evidence, the trial court found him guilty and convicted for the offence punishable under Section 138 of NI Act. Aggrieved by the same, appeal was preferred, which was also dismissed.

5. The learned counsel for the petitioner would submit that the cheque was not issued for any legally enforceable debt by the petitioner since there was no legally enforceable debt. The petitioner is one of the subscriber in the chit transaction conducted by the respondent. While taking the chit amount, the cheque was issued as security purpose. After the entire payment of chit amount, the respondent failed to return the same. He further submitted that no notice was served as contemplated under Section 138 of NI Act. Therefore, the complaint itself is not maintainable and it was lodged without any cause of action.



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6. On perusal of records, revealed that the respondent examined himself as PW1. Though the petitioner cross examined that the alleged cheque which was marked as Ex.P1 was issued for the purpose of security while taking the chit amount which was conducted by the respondent, no iota of evidence produced before the trial court. Except the suggestion put up by the petitioner, no other documents to show that Ex.P1 was issued for security purpose. In fact, the legal notice which was marked as Ex.P3 was returned by the petitioner as unclaimed. Therefore, the legal notice was duly issued by the respondent as contemplated under Section 138 of NI Act. The petitioner never denied the signature found in the cheque as well as issuance of cheque. Therefore, the respondent clearly proved his case and the courts below rightly convicted the petitioner. Hence, this Court finds no infirmity or illegality in the orders passed by the courts below. Further while suspending the sentence of the petitioner, this Court imposed condition to deposit a sum of Rs.75,000/- before the trial court. However, there is no proof to show that the petitioner complied with the said condition.



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7. Accordingly, this criminal revision is dismissed. Consequently,
connected miscellaneous petition is closed.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

- 1.The I Additional District and Sessions Judge,
Erode
- 2.The Judicial Magistrate Court (Fast Track Court No.I),
Erode

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