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Crl.R.C.No.651 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

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

Crl.R.C.No.651 of 2018

V.Senthil Kumar

.... Petitioner

Vs

D.M.Basuvaraj

.... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the judgment dated 20.02.2018 in Crl.A.No.28 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri, confirming the Judgment dated 03.07.2017 in C.C.No.126 of 2012 on the file of the learned Judicial Magistrate, Palacode.

For Petitioner : M/s.R.Selvakumar

For Respondent : Mr.V.R.Annagandhi

ORDER

This Criminal Revision Case has been filed as against the Judgment dated 20.02.2018 passed in Crl.A.No.28 of 2017 on the file of the Additional District and Sessions Judge, Dharmapuri, thereby confirming the Judgment dated 03.07.2017 in C.C.No.126 of 2012 on the



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file of the learned Judicial Magistrate, Palacode, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instrument Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instrument Act. The case of the respondent is that the petitioner is the close relative of the respondent. He is doing business with JCB vehicle. While being so, on 25.01.2011 for his urgent needs, he borrowed a sum of Rs.5,00,000/- from the respondent. He also assured that he will repay the same within a period of two months. However, he failed to return the same and as such, after repeated demand, he issued a cheque for a sum of Rs.5,00,000/-. When it was presented for collection, the same was returned for the reason 'funds insufficient'. It was duly informed to the petitioner and again the petitioner requested the respondent to present the cheque once again. On such instruction, again the respondent presented the cheque for collection and the same was returned for the reason 'funds insufficient'. Therefore, after causing statutory notice, the respondent lodged a complaint.

3. On the side of the respondent, he examined himself as P.W.1 and marked Exs.P1 to P6. On the side of the petitioner, he examined



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himself as D.W.1 and no document was marked.

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4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instrument Act and he was sentenced to undergo one year rigorous imprisonment and also awarded a compensation to the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and the order of the Trial Court was confirmed. Hence, this revision.

5. The learned counsel for the petitioner would submit that the petitioner, in his cross examination, categorically rebutted the presumption arising out of Sections 118 and 139 of Negotiable Instrument Act. Even according to the respondent, he categorically admitted that failed to remember as to from whom he received the amount to lend money to the petitioner. Thus it is clear that the respondent had no source of income to lend such a huge amount. The petitioner never had issued cheque for any legally enforceable debt. He handed over the cheque to one Mathesh, in turn the cheque was misused by the respondent. The petitioner never issued cheque as alleged in the



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complaint. Actually, the said Mathesh has stolen the cheque and handed over to the respondent, in turn it was misused by the respondent by initiating the proceedings under Section 138 of Negotiable Instrument Act.

6. Heard, Mr.R.Selvakumar, learned counsel appearing for the petitioner and Mr.V.R.Annagandhi, learned counsel appearing for the respondent and perused the materials available on record.

7. It is seen from the records that the petitioner borrowed a sum of Rs.5,00,000/- and in order to repay the same, he issued a cheque. The said cheque was presented on two occasions at the request of the petitioner. In the first occasion, the said cheque was presented for collection and the same was returned dishonoured with an endorsement 'funds insufficient'. Thereafter, the respondent caused statutory notice on 16.07.2012 and the same was duly received by the petitioner on 23.07.2012. On request made by the petitioner, again it was presented for collection and once again it was returned. The respondent caused statutory notice again on 31.07.2012 and the same was duly received by the petitioner on 08.08.2012, which was marked as Ex.P6.



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8. Though the petitioner had taken a specific stand that the respondent had no source of income to lend a huge amount of Rs.5,00,000/-, the petitioner did not even reply for the statutory notice caused by the respondent. Further the petitioner also failed to take any legal action as against the said Mathesh to whom the alleged cheque was given by the petitioner. Even after receipt of the statutory notice on two occasions, the petitioner did not lodge any complaint and failed to take any action as against the said Mathesh. Hence it cannot be said that the cheque was misused by the respondent. Except the cross examination of P.W.1, the petitioner did not produce any material to substantiate the defence taken by him. If at all the petitioner had the stood to his stand that the respondent had no source of income to lend such a huge money, the petitioner ought to have first denied in the reply notice and questioned the respondent about the source of income. The petitioner failed to disprove the case of the complainant and failed to rebut the presumption as contemplated under Section 139 of Negotiable Instruments Act. In fact, the petitioner also failed to make any statement recorded under Section 313 of Cr.P.C to rebut the presumption. Mere the cross examination of P.W.1 would not serve any purpose to rebut the



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presumption.

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9. 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.

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Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Additional District and Sessions Judge, Dharmapuri.
2. The Judicial Magistrate, Palacode.

G.K.ILANTHIRAIYAN. J.

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