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Crl.RC.No.675 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

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

Crl.RC.No.675 of 2018

Pandiyan

... Petitioner

Versus

Saminathan

... Respondent

PRAYER: Criminal Revision has been filed under Section 397 & 401 of the Code of Criminal Procedure to call for the records on the file of the learned Judicial Magistrate No.I, Ariyalur and to set aside the order in CA.No.12 of 2017 dated 20.12.2017 on the file of the learned Principal District Sessions Judge, Ariyalur, Ariyalur District confirming the order in STC.No.114 of 2015 on the file of the learned Judicial Magistrate No.I, Ariyalur, Ariyalur District.

For Petitioner : Mr.K.Balu

For Respondent : Mr.K.Priyavarshini,
for Mr.S.Kamadevan

ORDER



Crl.RC.No.675 of 2018

WEB COPY

This criminal revision has been filed against the order passed in CA.No.12 of 2017 dated 20.12.2017 on the file of the learned Principal District Sessions Judge, Ariyalur, Ariyalur District confirming the order passed in STC.No.114 of 2015 on the file of the learned Judicial Magistrate No.I, Ariyalur, Ariyalur District.

2. Heard, Mr.K.Balu, the learned counsel for the petitioner and M/s.K.Priyavarshini, the learned counsel for the respondent.

3. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The case of the respondent is that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent. In order to repay the same, the petitioner issued a cheque. It was presented for collection. However, it was returned dishonoured for the reason 'funds insufficient'. After causing legal notice, the respondent lodged complaint.

4. On the side of the respondent, he was examined as PW1 and



Crl.RC.No.675 of 2018

marked Ex.P1 to E.P5. On the side of the petitioner, he was examined as DW1 and marked Ex.D1. On perusal of the oral and documentary evidences, the trial court found the petitioner guilty and convicted him for the offence punishable under Section 138 of NI Act and sentenced him to undergo one year simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed and confirmed the order of the conviction of the trial court. The petitioner raised ground that the respondent has no source of income to lend such huge amount to the tune of Rs.5,00,000/- to the petitioner. Further, the respondent failed to mention the date of borrowal of the amount. Further averred that the instrument which was marked as Ex.P1 is valid only for a sum of Rs.1,00,000/-. It was also admitted by the petitioner that the Ex.P1 is valid only for a sum of Rs.1,00,000/- and it has been rejected for the higher value mentioned in the instrument. Therefore, both the courts below ought to have held that the presumption is in favour of the petitioner since the respondent failed to prove his case.

5. On perusal of records revealed that due to business transaction



Crl.RC.No.675 of 2018

between the petitioner and the respondent, the petitioner issued cheque for a sum of Rs.5,00,000/- in order to repay the loan amount payable by him which was marked as Ex.P1. The signature and the issuance of cheque in question to the respondent is not denied by the petitioner. It is also not in dispute that the cheque was presented for collection and it was returned dishonoured with endorsement 'funds insufficient'. The statutory notice which was marked as Ex.P3 and the acknowledgment was marked as Ex.P4. However after receipt of statutory notice, the petitioner failed to issue any reply notice. Since the petitioner never denied the issuance of cheque, there is a legal presumption that consideration of the cheque also passed to the petitioner herein. There is no evidence as to no capacity to lend money to the petitioner is adduced by the petitioner.

6. If at all the petitioner had taken specific stand that the respondent has no source of income to lend money, he ought to have rebutted the same by evidence. In fact, when his statement was recorded under Section 313 of Cr.P.C., there was no statement that the respondent had no source of income to lend such huge amount. Further, provision under



Crl.RC.No.675 of 2018

Section 118 of NI Act is clear that unless the contrary was proved, it is to be presumed that instrument had been made or drawn for consideration.

Therefore, as per Section 139 of NI Act, the court has to presume that unless the contrary was proved, the holder of the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused. However the petitioner failed to rebut the evidence of the respondent herein as if there was no legally enforceable debt or liability. Mere denial would not serve any purpose to rebut the case of the respondent herein. Therefore, the trial court rightly convicted the petitioner for the offence under Section 138 of NI Act and the same has been confirmed by the first appellate court. As such, this court finds no infirmity or illegality in the order passed by the courts below.

7. Further, it is to be noted that while suspending the sentence of the petitioner, this Court imposed condition that the petitioner shall deposit a sum of Rs.1,00,000/- to the credit of STC.No.114 of 2015 on the file of the learned Judicial Magistrate No.I, Ariyalur, Ariyalur District within a period of four weeks from the date of the order i.e. 13.06.2018. However, the



Crl.RC.No.675 of 2018

petitioner failed to comply with the said condition imposed by this Court.

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8. Accordingly, this criminal revision is dismissed and the trial court is directed to secure the accused and send him to prison to undergo the sentence imposed. **the period of imprisonment already undergone by the appellant is to be given set off under Section 428 of Cr.P.C.**

27.09.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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Crl.RC.No.675 of 2018

G.K.ILANTHIRAIYAN. J,



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Crl.RC.No.675 of 2018

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To

- 1.The learned Principal District Sessions Judge,
Ariyalur, Ariyalur District
- 2.The learned Judicial Magistrate No.I,
Ariyalur, Ariyalur District.
- 3.The Public Prosecutor,
High Court of Madras

Crl.RC.No.675 of 2018

27.09.2022