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Crl.R.C.No.677 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

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

Crl.R.C.No.677 of 2018

Rajaram

... Petitioner

Vs.

A.Murugesan

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the conviction and sentence imposed on the petitioners by the Second Additional District and Sessions Court, Erode in C.A.No.325 of 2017 dated 11.04.2017 confirming the Judgment passed by the learned Judicial Magistrate, Fast Track Court-I, Erode in S.T.C.No.304 of 2013 dated 20.11.2017 by allowing this Criminal Revision Petition.

For Petitioner : Mr.C.Munuswamy
for M/s M.Sudha

For Respondent : Not ready in notice
No appearance

ORDER



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This Criminal Revision case has been filed to set aside the conviction and sentence imposed on the petitioners by the Second Additional District and Sessions Court, Erode in C.A.No.325 of 2017 dated 11.04.2017, confirming the Judgment passed by the learned Judicial Magistrate, Fast Track Court-I, Erode in S.T.C.No.304 of 2013 dated 20.11.2017.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that on 23.01.2013, the petitioner borrowed a sum of Rs.2,00,000/- as loan. In order to repay the same, the petitioner issued a cheque. When the said cheque was presented for collection, it was returned dishonored for the reason “Account Closed”. Immediately, after causing statutory notice, the respondent lodged a complaint.

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P.1 to P.5. On the side of the petitioner, no one was examined



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and marked Ex.D1. On a perusal of oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also awarded compensation to the tune of Rs.2,00,000/-, failing which, the petitioner shall undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed, confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner would submit that the alleged cheque was not issued for any legally enforceable debt. It was issued only for the purpose of security. The respondent conducted a chit, in which the petitioner was one of the subscriber. At the time of taking the chit amount, the petitioner handed over 18 cheques as security to the respondent. After payment of the entire chit amount, which was taken by the petitioner, the respondent had returned only 8 cheques out of 18 cheques and the remaining cheques were misused by the respondent and the respondent initiated proceedings under Section 138 of Negotiable



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Instruments Act. In support of the said contentions they also marked Ex.D1 and it revealed that the respondent conducted a chit, in which, along with the petitioner, one Gopal was also one of the subscriber. The respondent categorically admitted that other than the petitioner, he also initiated proceedings under Section 138 of Negotiable Instruments Act as against other subscribers. Therefore, it shows that the alleged cheque was issued only for security purpose and not for any legally enforceable debt.

5. Heard, Mr.C.Munuswamy, learned counsel appearing for the petitioner.

6. A perusal of records revealed that the petitioner issued cheque in order to repay the loan amount of Rs.2,00,000/- in favour of the respondent. The said cheque was presented for collection and it was returned dishonored for the reason "Account Closed". Immediately, the respondent caused statutory notice, which was marked as Ex.P3. It was duly received and the acknowledgment was marked as Ex.P5. Even after the receipt of the same, the petitioner failed to reply to rebut the initial



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presumption. Only in the cross examination, the petitioner stated that the said cheque was issued for security purpose. However, the petitioner failed to produce any material evidence to substantiate the said contention except Ex.D1. Ex.D1 is nothing but the evidence in S.T.C.No.290 of 2010, which was initiated by the respondent as against one Gopal. In the said examination, the respondent deposed that he initiated the proceedings for the offence punishable under Section 138 of Negotiable Instruments Act as against the said Gopal, for non payment of the chit amount. Therefore, it has nothing to do with the present case.

7. Though, the petitioner had taken a specific stand that after payment of the chit amount, the respondent failed to return the cheque which were given as security purpose, the petitioner did not lodge any complaint or did not take any steps to recover those cheques from the respondent. Therefore, the petitioner failed to rebut the presumption as contemplated under Sections 118 and 139 of Negotiable Instruments Act.



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8. Therefore, both the Courts below rightly found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

9. Accordingly, this Criminal Revision case stands dismissed.

20.10.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Second Additional District and Sessions Court, Erode.

2. The Judicial Magistrate, Fast Track Court-I, Erode.

G.K.ILANTHIRAIYAN, J



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