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Crl.R.C.No.706 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM:

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

Crl.R.C.No.706 of 2018

V.Preman,
Proprietor, Beauty Bakery,
No.39, G.S.T.Road, Meenambakkam,
Chennai – 600 027.

...Petitioner

-Vs-

P.V.Krishna Prasad,
Rep. by his Power of Attorney
Mr.K.N.Sumithran,
No.46, Ottai Pillayar Koil Street,
Virugambakkam,
Chennai – 600 092.

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to call for the records and set aside the judgment passed in C.A.No.146 of 2017 dated 18.12.2017 by the learned XVI-Additional Judge, City Civil Court, Chennai and judgment passed in C.C.No.5380 of 2006 dated 24.05.2017 by the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

For Petitioner : Mr.V.Vijayakumar



Crl.R.C.No.706 of 2018

ORDER

WEB COPY This revision is filed as against the judgment passed in C.A.No.146 of 2017 dated 18.12.2017 on the file of the XVI Additional Judge, City Civil Court, Chennai, thereby confirming the judgment passed in C.C.No.5380 of 2006 dated 24.05.2017 on the file of the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, thereby convicted the petitioner for the offence under Section 138 of NI Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act.

3. The case of the respondent is that the petitioner had agreed to sell his bakery for a sum of Rs.5,00,000/- to the respondent and the petitioner also received the entire sale consideration of Rs.5,00,000/- and executed an undertaking agreement on 12.12.2005 thereby promised to hand over the said bakery shop within a period of 15 days. However, the petitioner failed to hand over the said bakery as promised by him and thereafter, he agreed to return back the entire sale consideration. Accordingly, the petitioner issued a cheque for a sum of Rs.5,00,000/-. When it was presented for collection and the same was returned for the reason “Insufficient Funds”. After causing statutory notice



to the petitioner the respondent initiated a proceeding under Section 138 of NI

Act.

4. On the side of the respondent PW1 was examined and Exs.P1 to 5 were marked and on the side of the petitioner no one was examined and Exs.R1 and 2 were marked.

5. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and also awarded compensation of cheque amount payable by the petitioner to the respondent. Aggrieved by the same the petitioner preferred an appeal and the same was dismissed confirming the judgment passed by the trial Court. Hence the revision.

6. The learned counsel for the petitioner would submit that the alleged cheque was not issued for any legally enforceable debt it was issued for security purpose at the time of taking the chit amount which was conducted by the respondent. In order to disprove the case of the respondent the petitioner marked Ex.R1 and R2, which categorically proved that the petitioner entered into a chit transaction with the respondent and while taking the chit amount, he



issued the alleged cheque and it was misused by the respondent to lodge a complaint. Therefore, once the petitioner rebut the case of the complainant, the burden of proof shifts to the shoulder of the complainant to prove his case. The respondent failed to prove his case and as such, the learned counsel for the petitioner prayed for setting aside the conviction and sentence imposed by the Courts below.

7. On perusal of records revealed that the petitioner received a sum of Rs.5,00,000/- from the respondent as sale consideration to sell his bakery and executed an undertaking deed on 12.12.2005 thereby agreed to hand over the shop within a period of 15 days. However, the petitioner failed to hand over the said shop and as such the respondent approached the petitioner. However, the petitioner agreed to repay the sale consideration which was received by him and issued a cheque, which was marked as Ex.P2. When the said cheque was presented for collection, the same has been returned for the reason “Insufficient Funds”. Therefore, the respondent caused statutory notice, which was marked as Ex.P5 and the same was duly received by the petitioner. However, the petitioner failed to pay the said sale consideration. Even agreeing for the sake of argument that the petitioner had chit transaction with the respondent and at the time of taking chit amount he had issued the cheque which was marked as



Ex.P2 as security, after payment of entire chit amount, the petitioner ought to have taken steps to get back the cheque.

8. In fact, the petitioner duly received the statutory notice which was marked as Ex.P5 and did not reply to the same. Even after receipt of the notice, the petitioner failed to take any action to get back the cheque. The respondent marked the document through which he paid the sale consideration and it revealed that the petitioner executed the said document and thereby admitted that he received Rs.5,00,000/- as sale consideration of the Beauty Bakery situated at No.39, G.S.T.Road, Meenambakkam, Chennai, and he also promised to hand over the said shop within a period of 15 days from 12.12.2005.

9. Further, the petitioner also admitted the signature found in the cheque as well as the issuance of cheque. The petitioner never disputed the sale agreement which was marked as Ex.P2. Therefore, this Court hold that the respondent discharged his initial burden as contemplated under Section 138 of NI Act. Therefore, both the Courts below rightly convicted the petitioner for the offence under Section 138 of NI Act and this Court finds no infirmity or illegality in the judgments passed by the Courts below. That apart, This Court



Crl.R.C.No.706 of 2018

while suspending the sentence, directed the petitioner to deposit a sum of Rs.1,50,000/- as compensation, within a period of eight weeks and the same was not complied with by the petitioner.

10. In view of the above, the criminal revision case stands dismissed.

21.11.2022

Index : Yes/No
Speaking/Non Speaking order
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To

1. The XVI-Additional Judge, City Civil Court, Chennai
2. The Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

G.K.ILANTHIRAIYAN. J,

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