



Crl.R.C.No.74 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

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

Crl.R.C.No.74 of 2018

P.Ganesan

...Petitioner

-Vs-

K.Duraisamy

... Respondent

Prayer: Criminal Revision case filed under Section 397 r/w Section 401 of Code of Criminal Procedure, to set aside the conviction and sentence imposed on him dated 18.01.2017 made in C.A.No.31 of 2016 on the file of the I Additional District and Sessions Judge, Tiruppur, confirming the conviction and sentence imposed on him dated 08.02.2016 made in C.C.No.36 of 2012 on the file of the Judicial Magistrate (Fast Track Court), Tiruppur.

For Petitioner : Mr.R.Babu

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Criminal Revision case is filed as against the judgment passed in C.A.No.31 of 2016 dated 18.01.2017 on the file of the I Additional District and Sessions Judge, Tiruppur, thereby confirming the judgment passed in



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C.C.No.36 of 2012 on the file of the learned Judicial Magistrate (Fast Track Court), Tiruppur, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

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

3. The respondent lodged a complaint alleging that the petitioner borrowed a sum of Rs.4,00,000/- from the respondent on 15.10.2010 and on the very same day, the petitioner also executed a promissory note and agreed to repay the said amount with interest at the rate of 12% per annum. In order to repay the said amount the petitioner issued a cheque, when it was presented for collection, the same was returned for the reason "funds insufficient". After causing statutory notice to the petitioner the respondent lodged the complaint.

4. On the side of the respondent, he examined PWs1 and 2 and marked Exs.1 to 7 and on the side of the petitioner no one was examined and no document was marked as exhibits.



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 one year simple imprisonment and imposed fine of Rs.1000/- in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the conviction order passed by the trial Court. Hence this revision.

6. The learned counsel for the petitioner would submit that on receipt of the statutory notice, the petitioner issued a reply notice which was marked as Ex.P7. In the said reply notice, he categorically denied the entire transaction between the petitioner and the respondent herein. The case of the petitioner is that he borrowed a sum of Rs.50,000/- from one Shanmugam, who is a partner of the respondent herein and at the time of borrowal of Rs.50,000/-, he executed a promissory note and also issued a cheque for security purpose. After repaying the entire loan amount with interest, the said Shanmugam, failed to return the said promissory note as well as the alleged cheque. The said Shanmugam, who is friend of the respondent, misused the cheque as if the petitioner borrowed a sum of Rs.4 lakhs from the respondent and deposited the cheque. Therefore, the petitioner categorically rebutted the evidence of the



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respondent and both the Courts below failed to consider the same and convicted the petitioner.

7. The learned counsel for the petitioner would further submit that at the time of suspension of sentence, this Court imposed a condition to deposit a sum of 50% of the cheque amount before the trial Court and the same was duly complied by the petitioner.

8. Per contra, the learned counsel for the respondent submitted that though the petitioner denied the allegations made in the statutory notice, he had taken a specific stand that he never borrowed any amount from the respondent and issued cheque for security purpose in favour of one Shanmugam, and the same was misused, the petitioner did not take any steps to get back the cheque from the said Shanmugam and no complaint was lodged as against the said Shanmugam, even after receipt of the statutory notice received by the respondent. Therefore, the trial Court rightly convicted the petitioner for the offence under Section 138 of NI Act.

9. Heard both sides and perused the entire materials available on record.



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10. It is seen that the petitioner borrowed a sum of Rs.4 lakhs from the respondent on execution of promissory note which was marked as Ex.P1. In order to repay the said amount, the petitioner issued a cheque in favour of the petitioner, when the same was presented for collection, it was returned for the reason "fund insufficient". After causing statutory notice which was marked as Ex.P4, the petitioner issued a reply notice which was marked as Ex.P7.

11. On perusal of Ex.P7 it reveals that the petitioner had taken a specific stand that he borrowed a sum of Rs.50,000/- from one Shangmugam, who is a partner of the respondent herein, at the time of borrowal of said amount, he issued a cheque and promissory note for security purpose. Even after repaying the entire loan amount, the said Shanmugam failed to return the same. Though the petitioner had taken a specific stand, even after receipt of the statutory notice caused by the respondent, the petitioner did not even take any action as against the said Shanmugam for misusing of the cheque. He also failed to lodge any complaint for not returning the cheque. In fact, the petitioner also failed to produce any witness to substantiate the said contention.



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12. That apart, the petitioner never denied the issuance of cheque and the signature found in the cheque. Therefore, the respondent proved his case beyond any doubt and trial Court rightly convicted the petitioner for the offence under Section 138 of NI Act. Therefore, this Court finds no infirmity or illegality in the judgment passed by the Courts below.

13. Accordingly, the criminal revision case stands dismissed. However, the learned counsel for the petitioner would submit that if the petitioner settles the entire cheque amount, he may be permitted to compound the said offence.

14. Considering the above submission, the petitioner is at liberty to approach this Court to compound the offence, if he settles the entire cheque amount.

19.10.2022

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,
Tiruppur.
2. The Judicial Magistrate (Fast Track Court),
Tiruppur.

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