IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

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

Crl.R.C.No.742 of 2018

K.S.Sivakumar ... Petitioner

Vs.

M.Senthilkumar ... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the judgment in C.A.No.126 of 2017 dated 23.03.2018 on the file of the Additional Sessions Judge, Maglir Neethi Mandram (Fast Track Mahila Court) Erode confirming the conviction and sentence made in S.T.C.No.730 of 2010 dated 24.03.2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, sentencing the petitioner to undergo simple imprisonment for six months and to pay compensation of Rs.5,00,000/-.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.V.S.Kesavan

ORDER

This Criminal Revision is directed as against the judgment passed in C.A.No.126 of 2017 dated 23.03.2018 on the file of the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Tract Mahila Court), Erode, confirming the judgment passed in S.T.C.No.730 of 2010 dated 24.03.2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Kodumudi, thereby convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, (herein after referred to as "the NI Act").

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the NI Act. According to the respondent on 26.06.2010, the accused borrowed a sum of Rs.5,00,000/- for his urgent needs. On the same day, he issued post dated cheque dated 25.07.2010 for the said sum. On instructions it was presented for collection and the same was returned dishonored for the reason that the payment stopped by the drawer. Thereafter, the respondent caused statutory notice for which the petitioner also replied

by the reply notice dated 02.09.2010 denying the issuance of cheque. Hence, the respondent filed the present case.

3. On the side of the respondent, he examined himself as P.W.1 and marked documents in Ex.P.1 to Ex.P.6. On the side of the petitioner, he examined himself as D.W.1 and marked documents in Ex.D.1 to Ex.D.4. On a perusal of oral and documentary evidences, the trial Court found him guilty and sentenced to undergo six months simple imprisonment and also awarded compensation to the tune of cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the order passed by the trial Court. Hence this present revision.

4. The learned counsel appearing for the petitioner submitted that the respondent is a stranger to the petitioner and he never borrowed any loan. Further the respondent has no source of income to lend such a huge amount. The petitioner never issued any cheque in order to repay the loan borrowed by the petitioner. The alleged cheque was obtained by

one Dr.Sivakumar while he was borrowing loan from one V.P.Ranthinasamy as security purpose. Subsequently, the cheque was misused by the respondent herein. In fact, the said impugned cheque along with other cheques, stamp papers and other documents were obtained on coercion by the said Dr.Sivakumar to submit the same before the said V.P.Ranthinasamy from whom he borrowed loan. Therefore, the petitioner immediately issued stop payment letter, which was marked as Ex.D.1.

4.1. He further submitted that on receipt of the statutory notice, the petitioner replied by way of reply notice dated 02.09.2010, which was marked as Ex.P.6. In the reply notice, the petitioner categorically stated that the alleged cheque was not issued for any legally enforceable debt and it was issued to one Dr. Sivakumar which was given as security to one V.P.Ranthinasamy. Therefore, he rebutted the presumption initial stage itself and the respondent failed to discharge his burden as required under Section 138 of NI Act.

4.2. He further submitted that the alleged cheque was returned for the reason that the payment stopped by the drawer. The petitioner was examined himself as D.W.1 and he categorically deposed that the respondent is stranger to him and he did not know him ever. He never borrowed any loan from the respondent as such need not to issue any cheque in order to any legally enforceable debt. In fact, after the present complaint, the petitioner also filed complaint before the Inspector of Police, District Crime Branch, Erode, as against the respondent and the said V.P.Ranthinasamy and others. The same was registered in Crime No.5 of 2012 and pending for investigation. Therefore, the petitioner categorically rebutted the presumption as contemplated under Section 138 of the NI Act. Even then, both the Courts below without considering the above facts and circumstances, convicted the petitioner. Hence, he prayed to allow the present revision.

5. Per contra, the learned counsel appearing for the respondent submitted that though the said cheque was obtained on coercion by one Dr.Sivakumar, the petitioner never lodged any complaint as against the

said doctor. Though the petitioner marked the stop payment letter, it was not marked through the bank manager and the petitioner failed to prove the stop payment letter. He did not even whisper about when the cheque was obtained by the said Dr.Sivakumar under coercion. Therefore, it is only after thought and only to escape from the clutches of law, the petitioner came with the said defence.

5.1. He further submitted that though the petitioner marked the letter given by Dr.Sivakumar as Ex.D.2, he failed to rebut the presumption arising out of Section 138 of the NI Act. As far as, Ex.D.3 and Ex.D.4 are concerned, they were obtained after filing of the complaint under Section 138 of the NI Act. Therefore, both the Courts below rightly convicted the petitioner and it doesn't warrant interference from this Court and prayed for dismissal of this petition.

6. Heard Mr.K.S.Karthikraja, learned counsel appearing for the petitioner and Mr.V.S.Kesavan, learned counsel appearing for the respondent.

7. The petitioner is an accused in the complaint lodged by the respondent. According to the respondent, on 26.06.2010, the petitioner borrowed a sum of Rs.5,00,000/- and on the same day, he was issued post dated cheque dated 25.07.2010. It was presented for collection and the same was returned dishonored for the reason that the payment stopped by the drawer. The petitioner marked Ex.D.1, the letter dated 07.10.2009, which was addressed to his banker. On a perusal of Ex.D.1 revealed that, he was coerced to sign blank cheques, pronotes, blank and signed stamp papers, conger sheets and white sheets to stand as guarantor for the amount borrowed by one Dr.Sivakumar from one V.P.Ranthinasamy and his associates. The said persons have already obtained sufficient security in the form of mortgage deed from Dr.Sivakumar and his wife. In addition to that they have filed the cheque, which were received from the petitioner and about to present the same. Therefore, the petitioner issued stop payment letter dated 07.10.2009 itself. On the strength of the said letter, when the respondent presented the cheque for collection, it was returned for reason that payment stopped by the drawer.

8. After receipt of the statutory notice, which was marked as Ex.P.3, the petitioner caused reply notice dated 02.09.2010, which was marked as Ex.P.6. The relevant portion of reply notice is extracted hereunder :-

> *"2. At the out set, your client is not at all known to our client and during the life time of out client never met your client or otherwise. It is specifically stated that out client not at all had any dealings with your client either directly or indirectly or through any agent at any point of time during his entire life time. The averments stated in para 1 of your notice that, on 06.06.2010 our client borrowed a sum of Rs.5,00,000/- from your client for urgent family expenses is specifically denied as false and untenable. It is again specifically denied as false that, out client after above said alleged false borrowel issued a post dated cheque bearing No. 938581 for Rs.5,00,000 dated 25.10.2010 drawn on ICICI Bank Ltd., Kodumudi branch to your client to discharge alleged false borrowel. It is denied that our client promised to honor the above stated cheque."*

9. Thus it is clear that in the initial stage itself, the petitioner categorically rebutted the presumption arising out of Section 138 of the

NI Act. In order to substantial his contention, he himself examined as D.W.1 and he categorically deposed that the respondent is a stranger and the petitioner had never acquittance with the respondent and he never borrowed any loan. The alleged cheque was taken by the doctor one Sivakumar as security for the loan borrowed by him from one V.P.Ranthinasamy. The respondent is none other than his associate and therefore, the petitioner lodged complaint as against the said V.P.Ranthinasamy, Dr. Sivakumar and others. Therefore, the respondent failed to discharge his initial burden as contemplated under Section 138 of the NI Act.

10. Further, after lodgment of complaint for the offence under Section 138 of the NI Act, the petitioner lodged complainant as against the said V.P.Ranthinasamy and the respondent herein before the Inspector of Police, District Crime Branch, Erode. The complaint was considered and FIR has been registered in Crime No.5 of 2012 for the offences under Sections 120B, 463, 465, 466, 467, 468, 469, 470, 471, 475, 476, 405, 415, 420, of IPC and Sections 3,4,6 of Tamil Nadu Prohibition of

Charging Exorbitant Interest Act 2003, in which the respondent is an accused and the investigation is still pending. Therefore, though the petitioner lodged complaint later, it can be considered for collateral purpose. Therefore, the respondent failed to prove that the cheque was issue for any legally enforceable debut.

11. Further, though the petitioner admits his signature, denied the issuance of cheque. It is categorically rebutted by the petitioner by examining himself as D.W.1 and marked the documents Ex.D.1 to Ex.D.4. Unfortunately, without considering the above facts and circumstances, the Courts below mechanically convicted the petitioner and the entire conviction and sentence imposed on the petitioner cannot be sustained and it is liable to be set aside.

12. Accordingly, the conviction and sentence imposed on the petitioner in the judgment passed in C.A.No.126 of 2017 dated 23.03.2018 on the file of the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Tract Mahila Court), Erode, confirming the judgment passed in S.T.C.No.730 of 2010 dated 24.03.2017 on the file of

the learned District Munsif-cum-Judicial Magistrate, Kodumudi, are hereby set aside and the petitioner is acquitted from the charge for the offence under Section 138 of the NI Act. Fine amount, if any paid, shall be refunded to the petitioner forthwith. Bail bonds, if any executed, shall stand cancelled.

13. Accordingly, the Criminal Revision stands allowed.

29.11.2022

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

rts

G.K.ILANTHIRAIYAN, J

rts

To

1. The Additional Sessions Judge,
   Magalir Neethi Mandram
   Fast Tract Mahila Court,
   Erode.

2. The District Munsif-cum-
   Judicial Magistrate,
   Kodumudi.

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