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Crl.R.C.No.779 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

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

Crl.R.C.No.779 of 2018

Dr.M.Senguttuvan

... Petitioner

Vs.

S.Balasubramanian

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the order dated 03.03.2018 in Crl.Appeal No.36 of 2017 on the file of II Additional District and Sessions Judge, Tindivanam and reversing the order in C.C.No.254 of 2016 on the file of Ist Judicial Magistrate at Tindivanam.

For Petitioner : Mr.R.Rajarajan

For Respondent : M/s.M.Dharshini

for Mr.G.Mohammed Aseef

ORDER

This Criminal Revision case has been filed as against the Judgment passed in Crl.A.No.36 of 2017 dated 03.03.2018 by the learned II Additional District and Sessions Judge, Tindivanam, thereby



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reversed the findings made in the Judgment in C.C.No.254 of 2016 dated 27.03.2017 passed by the learned Ist Judicial Magistrate at Tindivanam, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

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 case of the respondent is that the petitioner and the respondent acquainted with each other for several years. The respondent is a practicing Advocate and his wife is working as a teacher. While being so, the petitioner borrowed a sum of Rs.6,60,000/- and promised to repay the said amount within a period of one month. In order to repay the said amount, the petitioner issued cheque for a sum of Rs.6,60,000/- and the same was presented for collection. However, it was returned dishonored for the reason “Funds Insufficient”. Immediately, after causing legal notice, the respondent lodged a complaint.



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3. On the side of the respondent, he examined P.W.1 to P.W.3 and marked Exs.P.1 to P.6. On the side of the petitioner, he was examined as D.W.1 and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the petitioner not guilty for the offence punishable under Section 138 of Negotiable Instruments Act and dismissed the complaint. Aggrieved by the same, the respondent preferred an appeal and the same was allowed and petitioner was sentenced to undergo two years simple imprisonment and also awarded compensation to the tune of cheque amount, in default to undergo further period of three months simple imprisonment. Aggrieved by the same, the petitioner had preferred this revision.

4. The learned counsel for the petitioner would submit that the respondent is an Advocate. When he had lent money, he did not receive any documents for security purpose. When the respondent was lending such a huge amount, he would have possessed license to lend money. In fact, on behalf of one Rajarajan, the petitioner borrowed a sum of



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Rs.50,000/- for which, the petitioner had given the alleged cheque for security purpose. Even after returning the said amount, the respondent failed to return the cheque. In order to rebut the presumption, the petitioner was examined as D.W.1 and categorically deposed before the Trial Court. The Trial Court considered the same and rightly acquitted the petitioner. However, the first appellate Court without considering the facts, mechanically reversed the findings of the Trial Court.

5. Per contra, the learned counsel for the respondent would submit that he had discharged his initial burden as required under Section 138 of Negotiable Instruments Act. The petitioner never denied the signature found in the cheque as well as the issuance of cheque. Therefore, the First Appellate Court rightly convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and it does not warrants interference by this Court.

6. Heard, Mr.R.Rajarajan, learned counsel appearing for the petitioner and M/s.M.Dharshini, learned counsel appearing for the



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respondent.

7. Admittedly, the respondent is a practicing Advocate and his wife is working as a Teacher. The petitioner and the respondent are acquainted with each other for the past several years. While being so, the petitioner borrowed a sum of Rs.6,60,000/- from the respondent and as he was being a friend and acquainted with each other for several years, the respondent did not receive any document for security purpose. In order to repay the same, the petitioner issued a cheque on 31.05.2016. However, it was returned dishonored for the reason "Funds Insufficient". Though, the petitioner had taken a specific stand that the cheque was issued for security purpose, the petitioner failed to produce any piece of evidence to show that the said cheque was issued for security purpose. Even according to the petitioner, he categorically admitted that on behalf of one Rajaram, he borrowed a sum of Rs.50,000/- from the respondent and it became Rs.2,00,000/- and therefore, he has to pay a sum of Rs.2,00,000/- in favour of the respondent. Therefore, the petitioner never denied the issuance of cheque and the signature found in the cheque. After return of cheque, the respondent caused statutory notice as contemplated under



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Section 138 of Negotiable Instruments Act and he discharged his initial burden to prove his case.

8. Whereas, the petitioner failed to rebut the same and in fact, he admitted the part of borrowal. Therefore, the Trial Court without considering the above, mechanically acquitted the petitioner and the First Appellate Court reversed the findings of the Trial Court. That apart, the petitioner had taken a specific stand that only on behalf of the said Rajaram, he borrowed a sum of Rs.50,000/-. However, the petitioner failed to examine the said Rajaram, on his behalf. Even in the cross examination of D.W.1, the petitioner categorically deposed that a sum of Rs.50,000/- was borrowed from the respondent on behalf of the said Rajaram and it became Rs.2,00,000/- with interest. Therefore, the petitioner failed to rebut the presumption and the First Appellate Court rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. Hence, this Court finds no infirmity or illegality in the order passed by the first Appellate Court and this revision is liable to be dismissed.



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9. Accordingly, this Criminal Revision case stands dismissed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order
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To

1. The II Additional District and Sessions Judge, Tindivanam.

2. The Ist Judicial Magistrate at Tindivanam.



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G.K.ILANTHIRAIYAN, J

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