



Crl.R.C.No.805 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

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

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K.V.Karthikeyan

... Petitioner

Vs.

Senthilvel

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to call for records the case in C.A.No.28 of 2015 on the file of the Principal Sessions Judge at Namakkal, dated 17.03.2016 confirming the judgement passed in C.C.No.206 of 2012 on the file of the Judicial Magistrate Court, Rasipuram and set aside the conviction of the petitioner and direct that the petitioner may be set at liberty.

For Petitioner : Mr.C.Thangaraju

For Respondent : M/s.J.Prithivi
for M/s.S.Kaithamalai Kumaran



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ORDER

This Criminal Revision Petition is filed challenging the judgment passed in C.A.No.28 of 2015 on the file of the Principal Sessions Judge at Namakkal, dated 17.03.2016, thereby confirming the conviction passed in C.C.No.206 of 2012 on the file of the Judicial Magistrate Court, Rasipuram, dated 19.06.2015.

2. The petitioner is an accused in the complaint lodged by the respondent herein for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (in short "NI Act" hereinafter). The respondent lodged the said complaint as against the petitioner alleging that on 01.11.2008, the petitioner borrowed a sum of Rs.3,00,000/- and in order to repay the same, he issued a cheque for the said sum. On instruction, the respondent presented the same for collection and the same was returned with an endorsement as "Funds Insufficient". After causing notice on the petitioner as contemplated under Section 138 of NI Act, the respondent lodged the complaint.



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3. On the side of the respondent, he examined himself as P.W.1 and marked Ex.P.1 to Ex.P.11 and the petitioner himself examined as D.W.1 and no documents were marked on his side. On a perusal of the oral and documentary evidences on either side, the trial Court found the petitioner guilty and convicted him for the offence punishable under Section 138 of NI Act, thereby he was sentenced to undergo simple imprisonment for a period of six months and was imposed fine to the tune of Rs.2,000/- in default to undergo simple imprisonment for one month. Aggrieved by the same, the petitioner preferred appeal in Crl.A.No.28 of 2015 before the file of the Principal Sessions Judge at Namakkal and the same was dismissed on 17.03.2016.

4. The learned counsel for the petitioner would submit that, without going into the merits of the revision, he is ready and willing to settle the cheque amount towards interest of the loan amount borrowed by him. This Court, at the time of suspending the sentence, heard the submission of the petitioner that the alleged cheque amount was already deposited before the trial Court. However, the respondent refused to



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receive the same. That apart, this Court suggested the petitioner to pay some reasonable interest for the amount borrowed by him. Therefore, today the petitioner herein come before this Court with a Demand Draft to the tune of Rs.50,000/- towards interest for the alleged amount which was borrowed by him from the respondent.

5. However, on instructions, the learned counsel for the respondent would submit that the respondent is not willing to receive the Demand Draft to the tune of Rs.50,000/- from the petitioner and she argued the case.

6. Though this Court is not inclined to set aside the conviction on merits, in view of the amount deposited by the petitioner, this Court is inclined to set aside the conviction passed by the Courts below.

7. In view of the above, the conviction judgements in C.A.No.28 of 2015 on the file of the Principal Sessions Judge at Namakkal, dated 17.03.2016 and C.C.No.206 of 2012 on the file of the Judicial Magistrate



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Court, Rasipuram are set aside on the condition that the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh Only) towards interest for the loan amount borrowed by him before the trial Court on or before 28.10.2022, failing which, the conviction and sentence imposed by the Courts below stands automatically restored. On such deposit, the respondent is permitted to withdraw the amount by way of filing proper application before the trial Court.

8. Accordingly, this Criminal Revision Petition stands allowed.

11.10.2022

Index: Yes/No
Speaking/Non-speaking order
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To
1. The Principal Sessions Judge at Namakkal
2. The Judicial Magistrate Court, Rasipuram
3. The Public Prosecutor,
Puducherry.



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G.K.ILANTHIRAIYAN, J.,

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