



CRL.R.C.No.827 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

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

Crl.R.C.No.827 of 2018

1. S.Arulsamy
2. A.Kavitha

... petitioners

Vs.

V.Cheeralan

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the judgment dated 27.06.2018 made in C.A.No.20 of 2018 on the file of the learned XVII Additional Judge, City Civil Court, Madras, confirming the judgment and conviction dated 22.12.2017 made in C.C.No.1633 of 2015 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, acquit the petitioners from the charges.

For petitioners : Mr. B.R.Shankaralingam

For Respondent : No appearance



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ORDER

This Criminal Revision is arising out of the judgment passed in C.A.No.20 of 2018 dated 27.06.2018 on the file of the learned XVII Additional Judge, City Civil Court, Madras, confirming the judgment passed in C.C.No.1633 of 2015 dated 22.12.2017 on the file of the learned III Metropolitan Magistrate, George Town, Chennai, thereby convicting the petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, (herein after referred to as “the NI Act”).

2. The petitioners are accused in the complaint lodged by the respondent for the offence under Section 138 of the NI Act. According to the respondent, the petitioners approached the respondent and borrowed a sum of Rs.1,00,000/- each on 29.11.2014 and executed a pronote for the said sum and also agreed to repay the same with an interest at 1% per month. In order to repay the said amount, the petitioners issued cheque for the sum of Rs.2,20,000/- on 01.10.2015. When the cheque was presented for collection, the same was returned dishonored for the reason



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insufficient fund. After causing statutory notice, the respondent filed this present complaint.

3. On the side of the respondent, he examined himself as P.W.1 and marked documents as Ex.P.1 to Ex.P.5. On the side of the accused, no one was examined and no documents were marked. On a perusal of oral and documentary evidences, the trial Court found them guilty and sentenced to undergo six months simple imprisonment each and also awarded total compensation of Rs.3,00,000/- in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioners preferred an appeal and the same was also dismissed by confirming the judgment passed by the trial Court. Hence the petitioners filed this present revision.

4. The learned counsel appearing for the petitioners would submit that according to the respondent, the petitioners executed pronote on the date of the borrowal of the loan, which was marked as Ex.P.1 series. Admittedly there was a material alteration in Ex.P.1. Therefore,



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the respondent failed to discharge initial burden as contemplated under Section 138 of the NI Act. The material alteration in Ex.P.1 is fatal to the entire case of the prosecution. In support of his contention he relied upon the judgment reported in **2017(2)CTC 625** in the case of ***G.Vasantha Vs. Sri Maharaja Kallash Benefit Fund Ltd.***, in which this Court held that in the suit for recovery of money based on the promissory note, altering amount, scratching date and substituting letters constitute material alteration. The material alteration changes legal character of the instrument, as such under Section 87 of the NI Act, the instrument is void. However, without considering the above fact, both the Courts below convicted the petitioners for the offence under Section 138 of the NI Act. Hence, he prayed to allow this revision petition.

5. Heard Mr.B.R.Shankaralingam, learned counsel appearing for the petitioners. Though notice served to the respondent, no one is appearance on behalf of the respondent either in person or through pleader.



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6. The petitioners are accused in the complaint lodged by the respondent. On the date of borrowal of amount, the petitioners executed pronote dated 29.11.2014, which was marked as Ex.P.1. In order to repay the said loan amount, the petitioners jointly issued cheque on 01.10.2015 for a sum of Rs.2,20,000/-. The said cheque was presented for collection and same was returned dishonored for the reason that insufficient fund. Therefore, after causing statutory notice dated 26.10.2015 the respondent lodged the complaint. On receipt of the notice, the petitioners did not choose to give any reply. Further the petitioners did not deny their signature and issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of the NI Act.

7. Further in order to rebut the presumption, the petitioners failed to examine any witness and failed to mark any document, in support of their contention. The only contention raised before this Court is that the pronote which was allegedly executed by the petitioners has material alteration and it cannot be valid instrument and it is void under Section 87 of the NI Act. On the date of borrowal of amount, Ex.P.1 was



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executed by the petitioners. In order to repay the amount, the petitioners also issued cheque and on the strength of the issuance of cheque the present complaint has been filed. Therefore, it is not a suit for recovery of money. If at all any material alteration found in the cheque, the judgment cited by the learned counsel appearing for the petitioners can be relied upon.

8. In the case on hand, the petitioners were issued cheque and the same was dishonored, on its presentation as funds insufficient. The promissory note was used for collateral purpose and nothing else. Further the petitioners never denied their signature found in the cheque and issuance of cheque. Therefore, both the Courts below rightly convicted the petitioners and this Court finds no infirmity or illegality in the order passed by the Courts below.

9. However, the learned counsel appearing for the petitioners submitted that already the petitioners deposited part of the cheque amount before the trial Court and there is a possibility of settlement



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between the parties and the petitioners are ready and willing to settle the cheque amount within a period of two months. Considering the above facts and circumstances, this Court is not inclined to interfere with the conviction and sentence imposed by the Courts below and the Criminal Revision stands dismissed.

10. However, if the petitioners settle the cheque amount with the respondent on or before 23.01.2023, the conviction and sentence imposed by the Courts below shall stand automatically set aside. On such settlement, the respondent is permitted to withdraw the amount already deposited before the trial Court by filing appropriate application. It is made clear that on such application, the trial Court is directed to permit the respondent to withdraw the amount without ordering notice to the petitioners.

29.11.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

***Note :- Issue order copy on or
before 06.12.2022***

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G.K.ILANTHIRAIYAN, J

rts

To

1. The XVII Additional Judge,
City Civil Court, Chennai.
2. The III Metropolitan Magistrate,
George Town, Chennai

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