



Crl.RC.No.835 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

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

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K.Govindaraj

... Petitioner

Versus

P.Gnanamurugan

... Respondent

PRAYER:

Criminal Revision has been filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order of conviction dated 20.04.2018 in CA.No.261 of 2017 on the file of the I Additional District and Sessions Judge, Erode confirming the conviction imposed in judgment dated 21.08.2017 made in STC.No.462 of 2015 on the file of the learned Judicial Magistrate(Fast Track Court No.I), Erode.

For Petitioner : Mr.M.Guruprasad



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For Respondent : No appearance

ORDER

This criminal revision is directed as against the judgment in Crl.A.No.261 of 2017 dated 20.04.2018 on the file of the I Additional District and Sessions Judge, Erode, thereby confirming the order passed in STC.No.462 of 2015 dated 21.08.2017 on the file of the learned Judicial Magistrate(Fast Track Court-I), Erode, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent herein for the offence punishable under Section 138 of NI Act. According to the respondent, he is the proprietor of M/s.Gnanamurugan Textiles, Erode and he is doing textile business. The petitioner is the proprietor of M/s.Ajanta Enterprises and he is also doing textile business at Karur. He purchased textile goods to the tune of Rs.8,81,793/- under invoices dated 21.12.2012, 24.12.2012, 26.12.2012 and 10.01.2013. In



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order to settle the said bills, the petitioner issued two post dated cheques.

Both the cheques were presented for collection. However, both the cheques were returned for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged complaint.

3. On the side of the respondent, he examined PW1 and PW2 and marked Ex.P1 to Ex.P13. On the side of the petitioner, he examined DW1 and DW2 and marked Ex.D1 to Ex.D10. On perusal of oral and documentary evidence, the trial court found guilty under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment. The trial court also ordered compensation of the cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed and confirmed the order of conviction passed by the trial court.

4. The petitioner raised grounds that there was no legally enforceable debt in favour of the respondent. In order to rebut the presumption, the petitioner examined DW1 and DW2 and marked Ex.D1 to Ex.D10. Even without considering the above, the courts below convicted the



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petitioner for the offence punishable under Section 138 of NI Act. The respondent produced Ex.P8 to Ex.P11, the invoices. All are self documents, which will not bind the petitioner. There is no evidence to show that there was transaction between the petitioner and the respondent. Therefore, the alleged cheque was not issued for any legally enforceable debt. It was originally issued as security purpose and even after made payment towards purchase of textiles, the said cheque was misused by the respondent.

5. Heard, the learned counsel for the petitioner.

6. On perusal of the records, revealed that the respondent was examined as PW1. He deposed that the petitioner purchased textiles under bill No.731 dated 21.12.2012, bill No.740 dated 24.12.2012, bill No.746 dated 26.12.2012 and bill No.795 dated 10.01.2013 to the tune of Rs.8,81,793/-. The invoices were marked as Ex.P8 to Ex.P11. In order to prove the same, the ledger of the purchase was also marked as Ex.P12. The statement of accounts was also marked as Ex.P13. Therefore, the respondent discharged his initial burden as required under Section 138 of NI Act. Then



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the presumption under Section 139 of NI Act comes in favour of the petitioner. However, it can be rebuttable by the accused by probable defence or atleast create a shadow of doubt on the cheques that the cheques were not issued in discharge of any legally enforceable debt payable by the petitioner. Admittedly, the petitioner never denied his signature in the cheque and also issuance of cheque.

7. The only contention raised by the petitioner is that he was not having any business transaction with the respondent and the workers had colluded with him and misused the cheque. As stated above, in order to prove that transaction, the respondent marked Ex.P8 to Ex.P13 and proved the transaction by them. Though the petitioner examined DW1 and DW2, there was nothing elicited from them to disprove the case of the respondent herein. Therefore, the courts below rightly convicted the petitioner for the offence punishable under Section 138 of NI Act and there is no infirmity or illegality in the orders passed by the courts below. Further, when this Court suspended the sentence imposed by the courts below, imposed condition that the petitioner shall deposit a sum of Rs.3,00,000/- to the credit of the trial



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court. However, the petitioner failed to comply with the said condition.

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8. Accordingly, this criminal revision is dismissed.

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Internet: Yes

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,
Erode
- 2.The learned Judicial Magistrate(Fast Track Court No.I),
Erode.

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