IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2022

CORAM

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

Crl.R.C.No.838 of 2018

Mohan ... Petitioner

Vs.

Jayaprakash ... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the judgment made in C.A.No.83 of 2018 dated 07.07.2018 on the file of the learned II Additional District and Sessions Judge, Erode against the judgment passed in S.T.C.No.141 of 2017 dated 06.02.2018 by the learned Judicial Magistrate, Fast Track-1, Erode.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.Mohammed Hanza Ameeri
For Mr.S.Veeraraghavan

ORDER

This Criminal Revision case has been filed as against the judgment of conviction dated 07.07.2018, passed in C.A.No.83 of 2018 on the file of the learned II Additional District and Sessions Judge, Erode, thereby reversing the order of acquittal dated 06.02.2018 made in S.T.C.No.141 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court-I, Erode, for the offence under Section 138 of the Negotiable Instruments Act (herein after referred to as "the NI Act").

2. The petitioner is an accused and the respondent is the complainant. The respondent lodged complaint under Section 138 of the NI Act alleging that on 28.10.2016, the petitioner borrowed a sum of Rs.7,50,000/- and he also assured that he will repay the said sum on 28.12.2016. Thereafter, in order to repay the said amount, the petitioner issued a cheque dated 28.12.2016. When the same was presented for collection, it was returned dishonor for the reason that in funds sufficient. Thereafter, the respondent caused legal notice on 30.12.2016. On receipt of the same, the respondent issued reply notice dated 05.01.2017, and thereafter the respondent lodged the present complaint.

3. On the side of the respondent, he himself examined as P.W.1 and marked Ex.P.1 to Ex.P.8. On the side of the petitioner, he examined

himself as D.W.1 and also marked Ex.D.1 to Ex.D.11. On a perusal of oral and documentary evidences produced on either side, the trial Court found that the petitioner was not guilty for the offence under Section 138 of the NI Act and acquitted him. Aggrieved by the same, the respondent filed an appeal and the first appellate Court reversed the finding of the trial Court and convicted the petitioner for the offence under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and also awarded compensation of cheque amount, as against which the present revision.

4. The learned counsel appearing for the petitioner submitted that the first appellate Court without any reason mechanically reversed the findings of the trial Court for the reason that the respondent proved his case beyond any doubts, since the issuance of cheque in favour of the respondent herein has been proved. The legal presumption against the petitioner has not been rebutted to the manner or the procedure or known to law.

4.1. He further submitted that the trial Court passed detailed order that the respondent failed to prove his case that the petitioner borrowed a sum of Rs.7,50,000/- during the year 2013, whereas the petitioner established that he paid a sum of Rs.2,00,000/- during the year 2013, which corroborates his contention that he only borrowed a sum of Rs.2,00,000 and the said amount was duly repaid during the year 2013. Further, the cheque was issued for security purpose and the same was misused by the respondent to file this complaint.

4.2. He further submitted that the respondent deposed that he paid a sum of Rs.7,50,000/- through RTGS. However, the respondent failed to produce any evidence to show that the respondent had lend a sum of Rs.7,50,000/- through RTGS. The petitioner caused reply notice dated 05.01.2017 and categorically denied the borrowal of Rs.7,50,000/-. He further stated in the reply notice that he borrowed a sum of Rs.2,00,000/- during the year 2013 and the same was duly repaid fully in favour of the respondent. However, the respondent failed to return the cheque which was received as security purpose at the time of borrowal of loan. The petitioner also marked Ex.D.1 to Ex.D.11 to show that he promptly repay the loan amount which was received in the year 2013.

5. Per contra, the learned counsel appearing for the respondent submitted that though the petitioner had taken a stand that he borrowed a sum of Rs.2,00,000/- during the year 2013 and after repayment of the entire loan, the respondent failed to return the cheque which was issued for security purpose, the petitioner did not choose to lodge any complaint or made any public notice that not to use the cheque which was issued for security purpose. He further submitted that the petitioner never denied the signature found in the cheque and never denied the issuance of cheque in favour of the respondent. Therefore, the presumption in favour of the respondent not at all rebutted by the petitioner and the petitioner failed to rebut the same. Therefore, the first appellate Court rightly convicted the petitioner for the offence under Section 138 of the NI Act.

6. Heard Mr.S.N.Arunkumar, learned counsel appearing for the petitioner and Mr.M.Mohammed Hanza Ameeri, learned counsel appearing for the respondent.

7. The respondent is the money lender. The petitioner used to borrow money from the respondent. Accordingly in the year 2013, the petitioner borrowed a sum of Rs.2,00,000/- from the respondent. At the time of borrowal of the said loan, he issued cheque, which is marked as Ex.P.1, bearing No.716347 as security purpose. The petitioner duly repaid the said amount by bank deposit in favour of the respondent till 17.09.2016 and the bank deposit chellans were marked as Ex.D.1 to Ex.D.11. The last payment was made by the petitioner on 17.09.2016.

8. According to the respondent, the petitioner borrowed a sum of Rs.7,50,000/- on 28.10.2016 and the petitioner also paid interest of Rs.15,000/- for two months. Thereafter, the petitioner in order to repay the entire loan issued Ex.P.1 dated 28.12.2016. It is seen from the records, the petitioner used to repay the loan by way of monthly installments. Accordingly, he repaid the loan amount which was borrowed in the year 2013, by way of bank deposit till 17.09.2016. While being so, the petitioner could not have paid the interest of Rs.15,000/- by cash for two months. That apart, even according to the respondent, the

petitioner borrowed a sum of Rs.7,50,000/- as hand loan only on 28.10.2016. Immediately within a period of two months ie., on 28.12.2016 in order to repay the entire loan, the petitioner issued the alleged cheque.

9. It is seen from the past transactions, the petitioner used to repay the loan amount as monthly installments. Therefore, when the petitioner borrowed the loan only on 28.10.2016, he could not have issued cheque in order to repay the entire loan amount on 28.12.2016. Therefore, the petitioner clearly rebutted the case of the respondent herein.

10. That apart, on receipt of the statutory notice, the petitioner issued reply notice dated 05.01.2017. On a perusal of the reply notice, the petitioner categorically denied the issuance of cheque as alleged in the statutory notice dated 30.12.2016. The petitioner categorically stated that the said cheque was issued as security purpose at the time of borrowal of loan to the tune of Rs.2,00,000/-. Even after receipt of the reply notice, the respondent failed to send any rejoinder to the petitioner. Therefore,

the respondent failed to prove that Ex.P.1 was issued for legally enforceable debt and also he failed to prove that he lend a sum of Rs.7,50,000/- as loan to the petitioner herein. Whereas the presumption under Section 139 of the NI Act has been rebutted onus is shifted to the respondent to prove the cheque was issued for discharging legally subsisting debt.

11. According to the respondent, he lent the money from the money available on his hand. However, in his cross-examination he deposed that after selling turmeric and other agricultural products, he earned a sum of Rs.7,50,000/- and the same was borrowed by the petitioner. Whereas the income tax returns statement filed by the respondent, which is marked as Ex.P.7, revealed that from the agricultural, the respondent earned only Rs.72,200/- for the financial year 2016-2017.

12. Further, in the complaint the respondent stated that a sum of Rs.7,50,000/- was given as cash to the petitioner. Whereas in his deposition, he stated that the sum of Rs.7,50,000/- was paid to the

petitioner through RTGS. However, the respondent failed to produce any document to show that the said amount was sent through RTGS to the petitioner. Therefore, the trial Court rightly concluded that the respondent has no source of income to lend a sum of Rs.7,50,000/- and there is no legally enforceable debt to the petitioner. Unfortunately, the first appellate Court without considering the above facts and circumstances, mechanically reversed the findings of the trial Court without any reasons.

13. In view of the above discussions, this Court has no hesitation to interfere with the impugned order. Accordingly the judgment dated 07.07.2018, passed in C.A.No.83 of 2018 on the file of the learned II Additional District and Sessions Judge, Erode, is hereby set aside and the judgement dated 06.02.2018 passed by the learned Judicial Magistrate, Fast Track Court-I, Erode, in S.T.C.No.141 of 2017, is hereby restored.

14. In the result, the Criminal Revision stands allowed.

13.10.2022

Index: Yes/No

Internet: Yes/No
Speaking/Non-Speaking order

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To

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

2. The Judicial Magistrate,
   Fast Track Court-I, Erode.

G.K.ILANTHIRAIYAN, J

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