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Crl.R.C.No.894 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

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

Crl.RC.No.894 of 2018

Elango Petitioner

Vs

Santha Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the Judgment of the learned Principal Sessions Judge of Krishnagiri, dated 14.06.2018 in Crl.App.No.46 of 2017 confirming the Judgment of the learned District Munsif-cum-Judicial Magistrate of Denkanikottai dated 05.10.2017 in C.C.No.58 of 2014 and allow the above revision.

For Petitioner : Mr.J.Hariharan

For Respondent : Mr.D.Ramesh Kumar

ORDER

This Criminal Revision Case has been filed to set aside the Judgment dated 14.06.2018 passed in Crl.A.No.46 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri, thereby confirming the Judgment dated 05.10.2017 passed in C.C.No.58 of 2014 of the learned District Munsif-cum-



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Judicial Magistrate of Denkanikottai, 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. According to the respondent, the petitioner is well known person to her and in the month of January, 2013, in order to improve his business and to construct a house, he borrowed a sum of Rs.4,00,000/- as a loan from the respondent. He also promised to repay the said amount within a period of four months. However, he failed to pay the said amount. After repeated request, in order to repay the said amount, he issued post dated cheque. When the said cheque was presented for collection, the same was returned for the reason as 'fund insufficient'. Thereafter, the respondent caused statutory notice and the same was returned as 'door locked'. Hence, the complaint.

3. On the side of the respondent, she was examined as P.W.1 and marked Exs.P1 to P5. The petitioner did not examine any witness and did not mark any document.



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4. On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and the order passed by the Trial Court was confirmed. Hence, the revision.

5. The learned counsel appearing for the revision petitioner would submit that the petitioner never received any notice. According to the respondent, it was returned as 'door locked'. Therefore, it would not be sufficient service and as such, the complaint is not maintainable and that is find any cause of action. The petitioner categorically denied his signature found in the cheque. When the petitioner denied the signature, the burden shifted to the respondent to prove the signature found in the cheque. Though, the respondent categorically admitted in his cross examination that the respondent failed to take any steps to send the cheque for hand writing expert opinion to prove the signature of the petitioner herein. He further submitted that the respondent had no source of income to lend the said amount of Rs.4,00,000/- when she receives only Rs.14,000/- as family pension. She also categorically admitted



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that she only receives Rs.14,000/- as family pension on the demise of her husband. Therefore, the petitioner categorically rebutted the evidence of the respondent and rebutted the presumption under Section 138 of Negotiable Instruments Act. He also submitted that while suspending the sentence, the petitioner also deposited a sum of Rs.2,00,000/- before the Trial Court and the petitioner had duly complied with the condition and deposited the said amount.

6. The learned counsel for the respondent would submit that when the petitioner had taken a specific stand that he never signed in the disputed cheque, it is the duty of the petitioner to disprove the signature found in the cheque. Admittedly, the petitioner did not send the cheque for hand writing expert opinion by denying the signature found in the cheque. Further, the petitioner wantonly and illegally returned the notice with an endorsement 'door locked'. The endorsement 'door locked' is also sufficient amount of service. The petitioner had full knowledge about the statutory notice. Even then, he failed to reply and he failed to examine any witnesses to substantiate the defence raised before the Trial Court. Therefore, the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and it does not required any inference of this Court.



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7. Heard, Mr.J.Hariharan, learned counsel appearing for the petitioner and Mr.D.Ramesh Kumar, learned counsel appearing for the respondent and perused the materials available on record.

8. A perusal of the records reveals that the petitioner is well known person to the respondent and he borrowed a sum of Rs.4,00,000/- as loan. In order to repay the same, he issued a cheque, which was marked as Ex.P1. When it was presented for collection, the same was returned for the reason 'fund insufficient'. Thereafter, on 10.10.2013, the respondent caused statutory notice and it was returned with an endorsement as 'door locked', which was marked as Ex.P5. It is true that before filing the complaint, the statutory notice to the drawer of the cheque is mandatory and object of such requirement is to avoid unnecessary hardship to an honest drawer. In the case on hand, the respondent had sent statutory notice and the same was returned with a postal endorsement "door locked. The endorsement "door locked" also amounts due to service and it has to be presumed that the petitioner had knowledge about the statutory notice caused by the respondent. Further, the petitioner failed to prove that no notice was sent to the petitioner's address by evidence.



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Admittedly, no one was examined on the side of the petitioner and no document was marked on the side of the petitioner.

9. The learned counsel for the revision petitioner vehemently contended that when the accused denied the signature found in the cheque and disputed the signature found in the cheque, the duty of the de-facto complainant is to prove the signature found in the cheque, as if, the accused signed in the cheque.

10. On perusal of the cross examination revealed that the respondent helped to open the account on behalf of the petitioner. It is seen that the respondent signed the cheque and issued in her favour without any legally enforceable debt. It is stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge in whole or in part, or any debt or other liability. Mere denial would not amount to rebut the presumption under Section 139 of Negotiable Instrument Act. When the petitioner specifically denied and disputed signature found in the cheque, he ought to have taken appropriate steps to send Ex.P1 for getting hand writing expert opinion. Mere general denial would not be help of the petitioner to rebut the presumption. That apart,



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on perusal of the records revealed that the petitioner signed in Tamil, while his statement was recorded under Section 313 of Cr.P.C and both signatures found in the cheque as well as in the statement recorded under Section 313 of Cr.P.C. are one and the same.

11. The learned counsel for the petitioner also raised another ground that the respondent has no income for lending huge sum of Rs.4,00,000/-, when she receives only Rs.14,000/- as family pension on death of her husband. On perusal of the cross examination of P.W.1 revealed that she had received huge amount on the death of her husband as the terminal benefit, from which she lent the loan of Rs.4,00,000/-. It is also evident that the petitioner and the respondent had acquaintance with each other due to their business transaction. Further, though the petitioner raised ground that the respondent had no source of income, he failed to prove the same by evidence. In fact, he also failed to state any thing while recording his statement under Section 313 of Cr.P.C. Therefore, both the Courts below rightly found the petitioner guilty and convicted him for the offence punishable under Section 138 of Negotiable Instruments Act.



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12. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below. The learned counsel for the petitioner would submit that if the petitioner settles the entire amount in favour of the respondent, he is at liberty to file appropriate application to quash the conviction imposed by the Courts below.

17.10.2022

Index : Yes/No

Internet : Yes

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To

1.The Principal Sessions Judge,
Krishnagiri.

2. The District Munsif-cum-Judicial Magistrate,
Denkanikottai



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G.K.ILANTHIRAIYAN, J.

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