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Crl.R.C.No.935 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

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

Crl.R.C.No.935 of 2018

M.Shankar

... Petitioner

Vs.

P.Moorthy

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the judgment and conviction dated 20.04.2018 made in C.A.No.47 of 2018 on the file of the I Additional District and Sessions Judge, Erode, confirming the judgment dated 28.12.2017 made in S.T.C.No.288 of 2012 on the file of Judicial Magistrate (FTC No.I), Erode.

For Petitioner : Ms.C.S.Saravanan

For Respondent : No appearance

ORDER

This Criminal Revision is filed as against the judgment passed in C.A.No.47 of 2018 dated 20.04.2018 on the file of the I Additional District and Sessions Judge, Erode, thereby confirming the judgment dated 28.12.2017 passed in S.T.C.No.288 of 2012 on the file of the Judicial Magistrate (FTC



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No.I), Erode, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of NI Act.

3. According to the respondent, on 04.03.2012, the petitioner borrowed a sum of Rs.5,00,000/- as loan from the complainant for his business expenses. In order to discharge the said liability, the petitioner issued a cheque when the said cheque was presented for collection, the same has been returned for the reason "funds insufficient". After causing statutory notice to the petitioner, complainant lodged a complaint.

4. On the side of the respondent, he examined PW1 and marked Exs.P1 to P9 and on the side of the petitioner no one was examined and no document was marked as exhibits.

5. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty 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 in default to undergo one month simple imprisonment.

Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the judgment passed by the trial Court. Hence this revision.

6. The learned counsel for the petitioner would submit that there was no legally enforceable debt and as such, the petitioner is not liable to be punished for the offence under Section 138 of NI Act. The respondent also failed to prove the consideration, which was passed on through the alleged cheque. The respondent also had no source of income to lend such an huge amount. Except the cheque, no other documents were produced by the respondent to discharge his initial burden. Therefore, both the Courts below ought not to have convicted the petitioner for the offence under Section 138 of NI Act.

7. The crux of the complaint is that on 04.03.2012, the petitioner borrowed a sum of Rs.5 lakhs as loan and in order to discharge the said liability, the petitioner issued a cheque, when it was presented for collection, the same was returned for the reason "funds insufficient", the alleged cheque



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was marked as Ex.P1. A statutory notice was caused, which was marked as Ex.P4. On receipt of the same the petitioner failed to reply to the said notice.

Therefore, the respondent discharged his initial burden as required under Section 138 of NI Act. The petitioner failed to rebut the same through any proper defence or not at all created a doubt in the case of the respondent. The petitioner neither denied the issuance of cheque and nor the signature found in the cheque. Therefore, both the Courts below rightly convicted the petitioner for the offence under Section 138 of NI Act. Therefore, this Court finds no infirmity or illegality in the orders passed by the Courts below.

8. Accordingly, the criminal revision case stands dismissed. However, the learned counsel for the petitioner would submit that if the petitioner settles the entire cheque amount, he may be permitted to approach this Court for compounding the offence.

9. Considering the above submission, if the petitioner settles the entire cheque amount in favour of the respondent, he is at liberty to approach this Court to set aside the conviction imposed on him.

03.11.2022

Index:Yes/No
Speaking/Non speaking order
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To

- 1.The I Additional District and Sessions Judge,
Erode.
- 2.The Judicial Magistrate (FTC No.I),
Erode.



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G.K.ILANTHIRAIYAN. J,

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