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CRL.R.C.No.944 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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

Crl.R.C.No.944 of 2018

S.Rathinam

... Petitioner

Vs.

R.Arunagiri

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the order of conviction dated 05.07.2018 passed in CA.No.398 of 2017 by the XVII Additional City Civil Court at Chennai by confirming the order dated of conviction dated 21.11.2017 passed in C.C.No.656 of 2016 by the learned Metropolitan Magistrate fast Track Court -1 Egmore at Allikulam Chennai 3 and acquit the petitioner by allowing the Criminal Revision Petition.

For Petitioner : Mr.A.Balasingh Ramanujam

For Respondent : Mr.N.Elayaraja



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ORDER

This Criminal Revision Petition has been filed to set-aside the order of conviction, dated 05.07.2018 passed in CA.No.398 of 2017 by the XVII Additional City Civil Court at Chennai, thereby confirmed the order passed by the Trial Court, convicting the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months and awarded compensation for a sum of Rs.3,00,000/- as contemplated under Section 357(3) of Cr.P.C.

2. Heard both sides.

3. The petitioner is an accused in the complaint lodged by the respondent. The respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the petitioner is being a known person, borrowed a sum of Rs.3,00,000/- for his domestic and business expenses and the accused also executed a



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promissory note for the said amount. In order to repay the same, the petitioner issued a cheque for a sum of Rs.3,00,000/- and the same was presented for collection. The cheque was returned dishonor for the reason “Funds Insufficient”. Immediately, after causing legal notice, the respondent lodged a complaint.

4. On the side of the respondent, he examined P.W.1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and sentenced him to undergo six months simple imprisonment and awarded compensation for a sum of Rs.3,00,000/- as contemplated under Section 357(3) of Cr.P.C.

5. The first Appellate Court did not find any grounds to set aside the order passed by the Trial Court and confirmed the order passed by the Trial Court.



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6. The learned counsel for the petitioner raised grounds that the signature found in Ex.P1 and Ex.P2 are different one. It is also admitted by the respondent in the cross examination. The petitioner never received any notice for proper reply. Further, the respondent categorically admitted in his cross examination that the petitioner used to borrow a sum of Rs.5000/-, Rs.10,000/- and he returned the same. At the time of borrowal, for security purpose, the petitioner issued pro-notes and cheques. The said pro-notes and cheques were misused by the respondent by filing complaint for the offence punishable under Section 138 of Negotiable Instruments Act. That apart, the cheque was filled up by other ink by other person. It is also categorically admitted by the respondent. Even then, both the Courts below convicted the petitioner without analyzing the preponderance of probabilities in a proper manner.

7. A perusal of records revealed that though the petitioner raised ground that the signature and the other portion of Ex.P2 cheque was filled up by two persons, the petitioner failed to take any steps to send the same for expert opinion as contemplated under Section 45 of the



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Evidence Act. That apart, there is no technology to find out the age of the ink and difference in both inks. Further, it is now settled law that the cheque can be filled by other than the drawer of the cheque.

8. Insofar as Ex.P1 and Ex.P2 were received by the respondent as security purpose while borrowing loan of Rs.5,000/- and Rs.10,000/-, except the cross examination, the petitioner failed to produce any evidence to substantiate the said contention. Insofar as the difference in the signature found in the Ex.P1 and Ex.P2 are concerned, the Trial Court categorically explained that the petitioner had filed surrender petition and the petition to recall warrant under Section 70(2) of Cr.P.C in which, he signed as S.Rathinam and in the warrant petition he signed as Rathinam. In the memo he signed as Rathinam. Therefore, the petitioner used to sign in different manner. Hence, the defence taken by the petitioner cannot be considered for his acquittal. When the petitioner had raised so many grounds, he ought to have examined himself to disprove the case of the respondent herein. The petitioner did not even come to the witness box to support his own case. Therefore, non examination of the petitioner



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and non production of any documents to prove the defence raised by the respondent is fatal to the defence of the petitioner herein.

9. Hence, the Courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the orders passed by the Courts below and this petition is liable to be dismissed. Accordingly, this Criminal Revision Petition is dismissed.

28.09.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The XVII Additional City Civil Court at Chennai.

2. The Metropolitan Magistrate fast Track Court -1 Egmore at Allikulam Chennai-3.



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G.K.ILANTHIRAIYAN, J

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