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Crl.R.C.No.945 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

CORAM

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

Crl.R.C.No.945 of 2018

A.Kamaleshkumar

... Petitioner

Vs.

1. S.Praveenkumar

2. The Inspector of Police,
Kancheepuram Town,
Kancheepuram.
(R2 *suo motu* impleaded
as per order in
Crl.R.C.No.945 of 2018 dated
08.03.2022)

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C to set-aside the judgment passed by the XVIII Additional Sessions Judge, Chennai dated 28.06.2018 passed in Criminal Appeal No.49 of 2018 convicting the petitioner for an offence under Section 138 of Negotiable Instrument Act and sentenced to undergo six months simple imprisonment and to pay a compensation of Rs.42,00,000/- to the complaint under Section 357(3) Cr.P.C within one month and in default of payment of compensation, the accused shall undergo a further period of two months simple imprisonment as default sentence by confirming the order passed by the Metropolitan Magistrate FTC-IV George Town, Chennai in C.C.No.2569 of 2016 convicting the



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petitioner for an offence under Section 138 of Negotiable Instrument Act to acquit the appellant/accused.

For Petitioner : Mr.S.Sathish Kumar

For R1 : No appearance

For R2 : Mr.A.Gopinath

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set-aside the judgment passed by the XVIII Additional Sessions Judge, Chennai dated 28.06.2018 passed in Criminal Appeal No.49 of 2018 convicting the petitioner for an offence under Section 138 of Negotiable Instrument Act and sentenced to undergo six months simple imprisonment and to pay a compensation of Rs.42,00,000/- to the complaint under Section 357(3) Cr.P.C within one month and in default of payment of compensation, the accused shall undergo a further period of two months simple imprisonment as default sentence by confirming the order passed by the Metropolitan Magistrate FTC-IV George Town, Chennai in C.C.No.2569 of 2016 convicting the petitioner for an offence under Section 138 of Negotiable Instrument Act.

2. Heard Mr.S.Sathish Kumar, learned counsel appearing for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the second respondent. There is no representation on behalf of the



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first respondent herein.

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3. The petitioner is an accused in the complaint lodged by the first respondent. The first respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act alleging that the first respondent is running a jewellery business under the name of “P.S.Jewellers” at Chennai. The petitioner is also running the same business in the name of “Mahalakshmi Jewellers” at Kancheepuram. The petitioner purchased gold and silver ornaments from the first respondent and also borrowed loan from the first respondent for his business on various dates from the month of September 2014. In order to repay the entire amount, the petitioner issued a cheque for a sum of Rs.42,00,000/-. When the said cheque was presented for collection, the same was returned dishonor for the reason “Funds Insufficient”. After causing notice, the first respondent lodged a complaint for the offence punishable under Section 138 of Negotiable Instruments Act.

4. On the side of the first respondent, he was examined as P.W.1 and marked Ex.P.1 to Ex.P6. On the side of the petitioner, he was examined as D.W.1 and marked Ex.D1 to Ex.D5. On perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and convicted him under



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Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and to pay a compensation of Rs.42,00,000/-.

Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by the Appellate Court.

5. The petitioner raised grounds that the first respondent failed to file any documents to substantiate the loan amount and supply of jewels with specific dates and amount. Therefore, there is no basis for arriving at the alleged claim of Rs.42,00,000/-, by way of impugned cheque. Therefore, the entire case of the first respondent is improbable and that of the accused is highly probable. The first respondent also failed to produce any voucher for the huge sum of Rs.42,00,000/-. The petitioner marked Ex.D1 to Ex.D5 viz, five sale deeds for the market value of Rs.50,00,000/- executed in favour of the first respondent and his family members which were executed subsequent to September 2014. In the sale deed, there is no specific statement as to passing of consideration either by way of cheque or demand draft, but merely stated as paid. Whatever the amount borrowed by the petitioner, the same has been adjusted towards sale consideration and executed a sale deed in favour of the first respondent herein. However, without considering those facts, both the



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Courts below convicted the petitioner.

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6. A perusal of records revealed that the petitioner never denied the signature and issuance of cheque which was marked as Ex.P2. Therefore, there are ingredients to attract the offence punishable under Section 138 of Negotiable Instruments Act as specified and the Trial Court rightly had taken cognizance for the offence under Section 138 of Negotiable Instruments Act as against the petitioner. The provision under Section 118 (a) of Negotiable Instruments Act, revealed that there is presumption in favour of the holder viz, the first respondent herein, it shall be presumed that the holder of cheque, received a cheque of the nature referred under Section 138 of Negotiable Instrument Act, for the discharge in whole or in part, of any debt or other liability. These presumptions shall end only when the contrary is proved by the petitioner. However, these presumptions are rebuttable in nature. But, the petitioner failed to rebut the same by proper evidence. Though, the petitioner stated that the cheque was given only as security, he had not denied the signature in the cheque and issuance of cheque.



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7. A perusal of evidence of D.W.1, he admitted that there are no receipts for the accounts maintained in receipt of jewellery business between the petitioner and the first respondent herein. All the transactions were only oral and as such the defence taken by the petitioner cannot be taken into account.

8. As stated supra, the issuance of cheque and the signature of the cheque were not denied by the accused and when the failed to rebut the preponderance of probabilities, it has to be presumed that the cheque had been issued for a debt or liability. Hence, the initial presumption as contemplated under Section 139 of Negotiable Instruments Act has to be raised in favour of the first respondent herein. Though, the petitioner raised grounds that for whatever the amount borrowed from the first respondent, he had executed sale deeds which were marked as Ex.D1 to Ex.D5, a perusal of reply notice revealed that the petitioner did not even whisper about the sale deed. i.e., as if for the loan borrowed from the first respondent, the sale deeds were executed in his favour. The recital of the sale deeds also did not whisper about the loan borrowed by the petitioner herein.



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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 case] is dismissed.

28.09.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The XVIII Additional Sessions Judge, Chennai.

2. The Metropolitan Magistrate FTC-IV George Town, Chennai.



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G.K.ILANTHIRAIYAN, J

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