IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

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

CRL.R.C.No.976 of 2018

G.Sathishraja ... Petitioner

Vs.

V.Kesavarajan ... Respondent

Prayer: The Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to call for the records and set aside the order dated 17.07.2018 made in C.A.No.222 of 2017 IV Additional District and Sessions Judge, Erode District at Bhavani, by reversing the order of acquittal dated 27.03.2017 made in S.T.C.No.19 of 2015 on the file of the II Additional District Munsif, Bhavani, by allowing this criminal revision and acquit the petitioner from the offence under Section 138 of Negotiable Instruments Act.

For Petitioner : Mr.S.Lakshmanasamy

For Respondent : Mr.G.Ravikumar

O R D E R

The criminal revision has been filed as against the order passed in C.A.No.222 of 2017 dated 17.07.2018 on the file of the IV Additional District and Sessions Judge, Erode, thereby reversing the findings of the trial Court passed in S.T.C.No.19 of 2015 dated 27.03.2017 on the file of the II Additional District Munsif, Bhavani, thereby acquitted 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 punishable under Section 138 of Negotiable Instruments Act.

3. The case of the respondent is that he is doing business in the name of Sri Bannari Amman Enterprises and he is a dealer of PPC Brand of cements (Priya) and selling cements through his concern. The petitioner is being a customer of the above said Company for the past six years. The petitioner purchased cements for the purpose of building constrution from 05.10.2013 to 10.11.2013 for worth of Rs.5,09,220/-. The accused has issued post-dated cheque for a sum of Rs.5 lakhs on 18.11.2013 and he also represented that the remaining amount of Rs.9,220/- will be given by the accused as cash in hand to the respondent. On instruction, the said cheque was presented for collection however, it was returned dishonoured for the reason "funds insufficient". After causing statutory notice to the petitioner, the respondent lodged a complaint.

4. On the side of the respondent, PW1 and PW2 were examined and Exs.P1 to P6 were marked as exhibits and on the side of the petitioner, no one was examined and no document was marked.

5. On perusal of oral and documentary evidence, the trial Court found the petitioner not guilty and acquitted him for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the same, the respondent preferred an appeal and the same was allowed and convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of six months and also imposed fine of Rs.5 lakhs in default, the accused shall undergo simple imprisonment for further period of one month. Hence, this Revision.

6. The learned counsel for the petitioner would submit that the trial Court rightly found that the petitioner not guilty for the offence under Section 138 of Negotiable Instruments Act, for the reason that the respondent failed to prove that the said cheque was issued for legally enforceable debt. The respondent

categorically admitted in his cross examination that the petitioner issued cheque on 05.10.2013 at the time of first bill itself namely purchasing of cement to the tune of Rs.1,03,500/-. Therefore, the amount as mentioned in the notice as well as in the complaint that the petitioner purchased cements from 05.10.2013 was false. The alleged cheque as duly accepted by the respondent, failed to produce any document to show that the cements were purchased by the petitioner herein. Therefore, the cheque was not issued for any legally enforceable liability.

7. He would further submit that even assuming that the petitioner purchased cement that was under cash bill not on credit bill therefore, the petitioner never issued cheque for any legally enforceable debt. Without considering the facts and circumstances, the trial Court mechanically convicted the petitioner for the reason that the petitioner was not let in any evidence and he failed to issue any reply. There was no need for the petitioner to get into the box to disprove the case of the complainant when the petitioner categorically disproved the case of the respondent during cross examination.

8. In support of his contention, he relied upon the judgment of this Court reported in ***2022 (1) LW (Crl) 873 : 2022 (2) LW (Crl) 487*** in the case of

M.V.S.Rajendranath Vs. M/s.Raj Television Network Ltd., wherein it held that it is necessary, in each case, the accused has to get into the box under Section 315 Cr.P.C and give explanation. From the available materials ans by way of cross examination, the accused is only to probablize his defence about the existence of a legally enforceable debt or liability.

9. The learned counsel for the petitioner would further submit that the petitioner was continuing the purchase of cements from 05.11.2013 to 10.11.2013. Even according to the respondent the petitioner issued a post-dated cheque for a sum of Rs.5 lakhs on 18.11.2013 at the time of his first purchase and he continuously purchased the cement till 10.11.2013 and on instruction, the respondent presented the said cheque. Therefore, on the date of presentation of cheque, there was legally enforceable debt and as such the respondent categorically proved the case.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

11. On perusal of records revealed that the respondent is a dealer of PPC

Brand cements. The petitioner purchased cements from 05.10.2013 to 10.11.2013 the petitioner was marked statement of accounts as Ex.P6 and bills were marked as Ex.P7 series. The bill dated 05.10.2013 which was issued for a sum of Rs.1,03,500/-, it revealed that the petitioner had purchased cements from 05.10.2013 to 18.11.2013 to the tune of Rs.5,09,220/-. Further, the petitioner issued post-dated cheque for a sum of Rs.5 lakhs. Therefore, on instruction, when the respondent presented the said cheque it was returned for the reason "funds insufficient".

12. Admittedly, the petitioner never denied the issuance of cheque and the signature found in it. Therefore, the object of the provision under Section 138 of Negotiable Instruments Act is proved by the respondent. However, the presumption can be rebutted by the petitioner by probable defense. The petitioner failed to disprove the case of the respondent herein. In fact, on issuance of statutory notice, the petitioner refused to receive the same and returned and he failed to send any reply to rebut the case of the respondent.

13. The trial Court completely relied on the provisions and failed to mandate the statutory presumption under Sections 138 and 139 of Negotiable

Instruments Act. The statute mandates signature of an accused on the cheque in such form established, then its rules clause becomes operative. In such a situation, the obligation shifts upon the accused to discharge the presumption imposed by him. Once, the petitioner had admitted his signature found in the cheque and the issuance of the same, the trial Court ought to have arrived the presumption that the cheque was issued as consideration for a legally enforceable debt. The trial Court failed to call upon the respondent to explain the circumstances under which, the petitioner was liable to pay. Such an approach of the trial Court was directly in the teeth of the established legal decision and amounts to a patent error on law. Therefore, the Appellate Court rightly reversed the findings of the trial Court and convicted the petitioner. Hence, this Courts finds no infirmity or illegality in the orders passed by the Court below.

14. Accordingly, the criminal revision case is dismissed. However, the learned counsel for the petitioner submitted that the petitioner is ready to paid the entire amount and he can be permitted to approach this Court to compound the offence.

15. Considering the above submission, the petitioner is at liberty to approach this Court after settling the entire amount to compound the offence and whatever amount is lying in the trial Court, the respondent is permitted to withdraw the amount. The trial Court is directed to permit the respondent to withdraw the said amount without ordering any notice to the petitioner.

18.10.2022

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Index : Yes / No
Speaking / Non Speaking order

To

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

2.The II Additional District Munsif,
   Bahavani.

G.K.ILANTHIRAIYAN, J.
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