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Crl.R.C.No.457 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

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

Crl.R.C.No.457 of 2019

and Crl.M.P.Nos.6692 and 6694 of 2019

S.Mohan

... Petitioner

Vs.

Veermani

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the conviction imposed in the Judgment dated 12.04.2017 made in S.T.C.No.416 of 2016 on the file of the Judicial Magistrate No.I of Mannargudi and the same was modified by judgment dated 26.03.2019 made in C.A.No.18 of 2017 on the file of the learned Additional Sessions Judge, (Fast Track Mahila Court) of Thiruvarur by allowing this criminal revision petition.

For Petitioner : Mr.K.Jayaraman

ORDER

This Criminal Revision case has been filed as against the Judgment passed in C.A.No.18 of 2017 dated 26.03.2019, passed by the learned Additional Sessions Judge, (Fast Track Mahila Court) of Thiruvarur thereby modifying the Judgment passed in S.T.C.No.416 of 2016, dated 12.04.2017, on the file of the learned Judicial Magistrate No.I of Mannargudi.



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

The case of the respondent is that the accused borrowed a loan to the tune of Rs.5,00,000/-. In order to repay the said amount, he issued cheque for a sum of Rs.5,00,000/-. The said cheque was presented for collection and the same was returned dishonored for the reason "Funds Insufficient". Immediately, after causing legal notice, the respondent lodged a complaint and the same was duly received by the petitioner.

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P.1 to 5. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidences, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo two years simple imprisonment and also awarded compensation of the cheque amount of Rs.7,50,000/-, in default to undergo two months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was partly allowed, thereby reduced the sentence to the period of nine months and set aside the compensation imposed by the Trial Court. Hence, this revision.



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4. The learned counsel for the petitioner submitted that the respondent failed to prove on what date the petitioner borrowed loan and for what purpose?

The respondent also failed to prove that the cheque was issued for a legally enforceable debt. The petitioner borrowed a sum of Rs.1,00,000/- from the respondent. After returning the said amount, the respondent failed to return the cheque. Subsequently, it was misused by to initiate proceedings under Section 138 of the Negotiable Instruments Act. In fact, the first Appellate Court rightly concluded that the respondent failed to prove the exact liability and set aside the compensation imposed by the Trial Court. When it was being so, the respondent failed to discharge his initial burden as contemplated under Section 138 of Negotiable Instruments Act and as such the entire conviction is liable to be set aside.

5. Heard the learned counsel for the petitioner.

6. The petitioner issued a cheque for a sum of Rs.5,00,000/-, in order to settle his liability in favour of the respondent. It was presented for collection and the same was returned for the reason “Funds Insufficient”. After causing statutory notice, the respondent initiated proceedings under Section 138 of



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Negotiable Instruments Act. The cheque was marked as Ex.P1. The statutory notice was marked as Ex.P3. Though, the petitioner replied through a reply notice which was marked as Ex.P5, the petitioner failed to rebut the presumption arising out of Section 138 of Negotiable Instruments Act. Though, the petitioner had taken a specific stand that he had borrowed only Rs.1,00,000/- and the same was duly returned back to the respondent, Ex.P1 which was given as security while borrowing the loan was not returned to the petitioner. The petitioner did not even produce any iota of evidence to substantiate the said contention. In fact, he did not even enter into the box to substantiate the same. That apart, the petitioner never denied the signature found in the cheque and issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act. In order to rebut the same, the petitioner failed to disprove the case of the respondent.

7. Therefore, both the Courts below rightly found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act. That apart, though, this Court dismissed the exemption petition and directed the petitioner to surrender on or before 28.06.2022, the petitioner did not even



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surrender so far. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

8. Accordingly, this Criminal Revision case stands dismissed.

Consequently, connected Miscellaneous petitions are closed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Additional Sessions Judge, (Fast Track Mahila Court) of Thiruvavur.
2. The Judicial Magistrate No.I of Mannargudi.



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