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CrI.R.C.No.702 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

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

CRL.R.C.No.702 of 2019
and CrI.M.P.Nos.9827 & 9828 of 2019

Chandra Kumar

... Petitioner

Vs.

M/S. Jetair Tours (P) Ltd.,
Rep. by S.Baskar, Authorised Official,
Office at Thappar House, First Floor,
No.43/44, Montieth Road, Egmore,
Chennai – 600 008.

... Respondent

Prayer: The Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure to set aside the judgment dated 22.09.2019 passed against the petitioner herein in Criminal Appeal No.353 of 2018 by the learned I Additional Sessions Court, City Civil Court, Chennai, confirming the judgment of conviction passed by the learned XX Metropolitan Magistrate, Chennai, in C.C.No.3371 of 2016 dated 05.06.2018 imposing one year simple imprisonment and to pay compensation of Rs.13,00,000/- and in default to undergo simple imprisonment for three months and a sum of Rs.5,000/- as fine and in default to undergo simple imprisonment for one month.

For Petitioner : Mr.M.Deivanandam

For Respondent : M.J.Jawahar
for Mr.K.P.Anantha Krishna



CrI.R.C.No.702 of 2019

WEB COPY

ORDER

This petition has been filed to set aside the judgment dated 22.09.2019 passed against the petitioner herein in Criminal Appeal No.353 of 2018 by the learned I Additional Sessions Court, City Civil Court, Chennai, confirming the judgment of conviction passed by the learned XX Metropolitan Magistrate, Chennai, in C.C.No.3371 of 2016 dated 05.06.2018.

2. The learned counsel for the petitioner would submit that he has no instructions from the petitioner and after repeated reminders, it shows that the petitioner is not interested to proceed with the case since suspending the sentence.

3. This Court, by an order dated 19.07.2019, imposed a condition that the petitioner shall deposit a sum of Rs.5 lakhs to the credit of trial Court. However, even till today the petitioner has failed to comply with the condition. Therefore, this Court is inclined to pass orders on merits.

4. The respondent lodged a complaint as against the petitioner for the offence under Section 138 of Negotiable Instruments Act, alleging that the



CrI.R.C.No.702 of 2019

respondent Company was in a business of tourism management including booking of domestic and international ticketing. While so, in the month of February 2014, the petitioner approached the respondent and obtained membership as an associate of the company thereby agreed to all terms and conditions. Thereafter, the petitioner had began business with the respondent including domestic and international ticketing on credit for a period beginning from 10.03.2014 to 11.08.2014. Further, the transactions done during the said period the petitioner incurred a liability to the tune of Rs.26,10,583/-. However, the petitioner failed to pay the said amount and after repeated requests in order to settle the said liability, the petitioner issued five cheques and also promised the respondent to honour the same. Further, the said five cheques were presented for collection the same were returned dis-honoured for the reason " funds insufficient". Therefore, the respondent caused legal notice to the petitioner and lodged a complaint.

5. On the side of the respondent PW1 was examined and Exs.P1 to P7 were marked and on the side of the petitioner, no one was examined and no material was marked as Exhibits.



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6. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty and convicted him for the offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for one year and also awarded a compensation of Rs.13,00,000/-. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the order of conviction passed by the trial Court.

7. The petitioner raised grounds that the Ex-P2, the agreement between the petitioner and the respondent was not executed by him. It contains only signature of the petitioner and it does not contain the signature of the respondent or its representatives. The Ex-P3, the ledger of the petitioner does not have any details to specifically show that the transactions reflected in the ledger was done by the petitioner. Therefore, the presumption of liability of the petitioner has been rebutted by the petitioner.

8. On perusal of records revealed that the Ex-P2 is the membership application form dated 28.02.2014 submitted by the petitioner as Proprietor of M/S. Payanam Travel Tourism, wherein the petitioner sought membership to the respondent for booking of air tickets. Accordingly, the petitioner was



Crl.R.C.No.702 of 2019

granted membership and he had began business with the respondent for booking air tickets for his customers on credit basis from 10.03.2014 to 11.08.2014.

9. It is seen from the Ex-P3, the statement of accounts revealed that. Therefore, the agreement executed by the petitioner need not contain the signature of the respondent, since it is only an application seeking membership and the same was duly accepted by the respondent. Therefore, Ex-P4, the cheques were not issued by the petitioner at the time of execution of membership. The petitioner also failed to produce any material to show that the said cheques issued for security purpose at the time of granting membership. As per Ex-P3, the statement of records managed by the respondent a sum of Rs.26,10,583/- was payable by the petitioner. Therefore, the respondent proved his case as contemplated under Section 138 of NI Act.

10. Hence, the Court below rightly convicted and sentenced the petitioner for the offence under Section 138 NI Act, and this Court finds no infirmity or illegality in the order passed by the Court below and this petition is liable to be dismissed.



CrI.R.C.No.702 of 2019

WEB COPY 11. Accordingly, the Criminal Revision case stands dismissed.

Consequently, connected miscellaneous petitions are closed.

11.10.2022

Index : Yes / No

Speaking / Non Speaking order

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To

1. The Ist Additional Sessions Court, City Civil Court,
Chennai.
2. The XXth Metropolitan Magistrate,
Chennai.



WEB COPY



CrI.R.C.No.702 of 2019

G.K.ILANTHIRAIYAN, J.
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CrI.R.C.No.702 of 2019

11.10.2022