IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.142 OF 2017
AND
CRL.M.P.NO.1504 OF 2017

K.Senthilraja ...Petitioner/2nd accused

Vs.

1.V.Boopathi

2.State rep.by
The Public Prosecutor, Erode. ...Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order passed the learned Judicial Magistrate, Fast Track Court-II, Erode in S.T.C.No.276 of 2011 dated 10.12.2013 as confirmed by the judgment of the Principal District-cum-Sessions Judge, Erode in C.A.No.20 of 2014 dated 17.12.2015.

For Petitioner	:	Mr.B.Pachayappan for M/s.T.Gowthaman
For R1	:	No appearance
For R2	:	Mr.A.Gopinath Government Advocate (Crl.side)

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned Principal District-cum-Sessions Judge, Erode in C.A.No.20 of 2014 dated 17.12.2015, which confirmed the judgment of the learned Judicial Magistrate, Fast Track Court-II, Erode, dated 10.12.2013, passed in S.T.C.No.276 of 2011.

2. The revision petitioner is the 2nd accused before the trial Court. The case has arisen out of a private complaint given by the respondent/complainant on the allegations that the cheque issued by the revision petitioner/2nd accused dated 10.11.2011 for a sum of Rs.1,80,000/- was returned for the

reasons of "insufficient fund". The account held by the 2nd accused is a joint account with the 1st accused. After issuing statutory legal notice to the accused 1 and 2 and also after complying with the legal mandates, the respondent/complainant has filed a complaint against both the accused for an offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. On being satisfied with the materials available on record, the accused were questioned for the offence under Section 138 of N.I.Act. The accused pleaded innocence and claimed to be tried. Accordingly, the trial was conducted.

4. During the course of trial, on the side of the respondent/complainant, the complainant has examined himself as PW.1 and five (5) exhibits have been marked as Ex.P1 to Ex.P5. On the side of accused, the revision the petitioner/2nd accused was examined as DW.1 and no document has been marked.

5. After the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge found the 2nd accused guilty for the offence under Section 138 of N.I.Act and convicted and sentenced him as follows:

Rank of the accused	Charges	Findings	Punishment
1st accused	U/s 138 of N.I.Act	Not guilty	Acquitted
2nd accused	U/s 138 of N.I.Act	Guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and imposed with a fine of Rs.5,000/-; in default to undergo one month Simple Imprisonment

6. The appeal preferred by the 2nd accused in C.A.No.20 of 2014 was also dismissed. Aggrieved over that, the 2nd accused has preferred this criminal revision case.

7. Heard the learned counsel for the revision petitioner/2nd accused.

8. The learned counsel for the revision petitioner/2nd accused submitted that the complainant is not at all known to him and he was not aware of any other transaction between his brother/1st accused and the complainant; his brother/1st accused might have got some business dealing with the complainant and had given the cheque as security; that has been misused by the defacto complainant for the purpose of this case; even in the evidence of the respondent/complainant, he has stated that the

cheque involved in S.T.C.No.276 of 2011 was signed by the 1st accused and not by the 2nd accused; the evidence of PW.1 itself is not reliable; the Courts below have not appreciated the evidence in proper perspective and convicted the accused. Hence the revision case has to be allowed.

9. Points for consideration:

Whether the judgement of the trial court suffer from any factual or legal infirmity so as to warrant my interference?

10. Though the revision petitioner/2nd accused has stated that the respondent/complainant is not at all known to him and he was not aware of the business dealing between the 1st accused and the respondent, his own brother/the 1st accused was not examined as a witness on this aspect. It is seen from the evidence of PW.1 that he has filed two cases on the basis of two cheques issued by the accused 1 and 2. However in the cross examination of PW.1, he has stated that the impugned cheque was signed by the 1st accused not by the 2nd accused. But the fact remains that the impugned cheque was signed by the 1st accused and not by the 2nd accused. It is not the case of the revision petitioner/2nd accused that the 1st accused had forged his signature in the impugned cheque and issued it to the respondent/complainant as security for any business transaction. In fact the cross examination of PW.1 would show that both the accused have made a common cross examination and did not have any individual suggestion with regard to their respective defence.

11. The case of the respondent/complainant is that both the accused had availed the loan amount from him and for which the 2nd accused had issued the impugned cheque. The revision petitioner/2nd accused had examined himself as DW.1 and in his evidence he had stated that he did not affix the signature on the cheque, but he admits that the 1st accused is his younger brother. When the cheque was presented for collection in the bank, it was not returned for the reason that the signature differed. So it goes without saying that the revision petitioner/2nd accused has affixed his signature on the cheque. Only for the purpose of this case, he has stated that he has not affixed the signature on the cheque. Once the execution of the cheque is proved, the holder of the cheque will get the benefit of presumption, atleast at this stage the cheque was issued towards discharging a legally enforceable debt or liability. Despite the revision petitioner/2nd accused has stated that the cheque was given to the respondent/complainant only as security, he did not substantiate the same even in his evidence. There is no explanation given in his evidence as to how that cheque went to the hands of the respondent/complainant. In his cross examination also he has stated that the he had not demanded the

complainant to return that cheque, when he sent the reply notice. Neither he had given any complaint to police that the cheque was misused. So in all probabilities the respondent/complainant had proved that the cheque was issued only towards the discharge of a legally enforceable debt. Hence I do not find any factual or legal infirmity of application of law by the Courts below. Hence the judgment of the learned trial Judge does not warrant interference.

12. However, the learned counsel for the petitioner requested some leniency in the matter of punishment. The fine amount has been already paid by the petitioner/2nd accused.

13. In the result, this Criminal Revision Case is partly allowed and the judgment of the trial Court made in S.T.C.No.276 of 2011, dated 10.12.2013 modified to the extent that the 2nd accused is found guilty for the offence under Section 138 of N.I.Act and he was convicted and sentenced to undergo 6 months R.I instead of one year R.I. and to pay a fine of Rs.5,000/-, in default to undergo one month S.I. If the fine amount has already been paid by the accused, he need not pay it once again. The trial Court is directed to issue NBW to secure the petitioner/2nd accused and commit him to prison to undergo the remaining period of sentence. Consequently, connected criminal miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

1.The Principal District
cum-Sessions Judge, Erode.

2.The Judicial Magistrate,
Fast Track Court-II, Erode.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Gowthaman, Advocate Sr.No.4442

Crl.R.C.No.142 of 2017

PL(CO)
RVM(07/04/2022)