IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2022

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1536 of 2017
and
Crl.M.P.Nos.15362 & 15363 of 2017

M.Krishnasamy .. Petitioner

Vs.

1.A.Rajathi

2.The State,
Public Prosecutor,
Erode District.
..Respondents

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the Judgment dated 09.10.2017 passed in C.A.No.215 of 2016 on the file of the Court of the IV Additional District and Sessions Judge, and confirming the order of conviction dated 02.11.2016 of the learned II Assistant District Munsif at Bhavani in S.T.C.No.64 of 2015 Erode District at Bhavani.

For Petitioner : No appearance

For Respondent : No appearance

O R D E R

This Criminal Revision Case is filed against the concurrent findings of the Courts below holding the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that the petitioner borrowed a sum of Rs.1,50,000/- to meet his urgent expenses and gave three post dated cheques, each for Rs.50,000/- in favour of the complainant. When the cheques were presented for collection, the same have been returned as "Insufficient Funds". Hence the complaint after causing statutory notice.

3. To prove the complaint, prosecution examined himself as PW.1 and marked eight (8) exhibits as Ex.P1 to Ex.P8. On the side of the accused, the defendant examined himself as DW.1 and marked ten (10) Exhibits as Ex.D1 to Ex.D10.

4. The specific case of the complainant is that a sum of Rs.1,50,000/- was borrowed and to discharge the said loan, three cheques Ex.P1 to Ex.P3 each for Rs.50,000/- were given to the complainant, but those cheques were returned saying insufficient of funds. The return memos are Ex.P4 to Ex.P6. A statutory notice was issued on 30.03.2013 and the same was returned undelivered . Therefore, the accused is liable to be prosecuted under Section 138 of Negotiable Instruments Act.

5. Contrarily, through the oral evidence and documents marked as Ex.D1 to Ex.D10, the petitioner/accused contended that he never borrowed any money from the complainant. The cheques Ex.P1 to Ex.P3 were issued to one Vijayakumari for security purpose and the complainant has no right to enforce any debt. Further, the statutory notice Ex.P7 was not served to him and without causing notice, cause of action for filing a complaint will not arise. However, the Courts below negatived the contention of the accused holding that the foundation fact of issuance of the cheques for discharging the enforceable debt been proved by the complainant.

6. Contrarily, the accused has failed to discharge the presumption against him through Ex.D1 to Ex.D10. The trial Court while holding the accused guilty, sentenced him to undergo 6 months Simple Imprisonment and to pay a fine of Rs.1,50,000/- being the cheque amount as compensation. The appeal preferred before the IV Additional District and Sessions Judge, Erode in C.A.No.215 of 2016 was dismissed, confirming the judgment of the trial Court.

7. In the revision case, it is contended that the Courts below erred in appreciating the evidence let in by the accused in Ex.D1 to Ex.D10. The probable case of the accused is that the cheques were issued as security to one Vijayakumari, the daughter of the complainant, for the loan of Rs.2,50,000/- borrowed on 06.03.2008 and Rs.2,50,000/- on 04.04.2008. Ex.P1 to Ex.P3 were issued as a security and after discharging the entire loan amount on 05.12.2011, when the petitioner demanded return of the cheques, Vijayakumari, the daughter of the *de facto* complainant gave lame excuse that she has misplaced the cheques while shifting her residence. When the loan borrowed was discharged, the said Vijayakumari filed a Suit suppressing the fact and the matter is pending. Likewise, another Suit was filed through the grandson of the complainant and that was settled in Lok Adalat. Therefore, the trial Court ought to have dismissed the complaint on the ground that the cheques were not issued for enforceable debt.

8. However, on perusing the record and deposition, this Court finds that the transaction alleged to have been taken place between the petitioner herein and one Vijayakumari, the wife of the *de facto* complainant/1st respondent has no bearing the case in hand. The cheques which are marked as Ex.P1 to Ex.P3 are signed by the petitioner. The case of the petitioner is not that there was money transaction with the petitioner. But his contention is that the cheques were not issued for discharging debt. The Courts below has rightly considered the defence raised by the petitioner and has observed that if the money borrowed from Vijayakumari got settled in the month of December 2011 and three cheques Ex.P1 to Ex.P3 were issued as a security, then immediately on repayment of the said loan, the same may be intimated to the bank, having kept quite for more than a year and having failed to reply to the notice, the defence taken at the time of trial can only be considered as after thought. In the light of the facts as discussed above, this Court finds no merit in the case and therefore this Criminal Revision Case is liable to be dismissed.

9. The Criminal Revision Case stands dismissed accordingly. Consequently, the connected Criminal Miscellaneous Petitions are also dismissed.

11.10.2022

Internet : Yes/No
Index: Yes/No

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To

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

2. The II Assistant District Munsif, Bhavani.

Dr.G.JAYACHANDRAN, J.

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