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Crl.R.C.No.1584 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.1584 of 2017

V. Yoganathan

... Petitioner

Vs.

Palanisamy

... Respondent

Prayer: Criminal Revision Case is filed under Section 397 & 401 of Criminal Procedure Code, against the judgment passed by the II Additional District & Sessions Judge, Tirupur by its order dated 17.02.2017 in C.A.No.64 of 2016 and dismissing the Review Petition in Crl.M.P.No.11 of 2017 in C.A.No.64 of 2016 by its order dated 16.08.2017 and confirming the judgment of the trial Court dated 09.05.2016 in S.T.C.No.1770 of 2009.

For Petitioner : Mr. M. Vijayakumaran

For Respondent : No Appearance



ORDER

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

2. The brief facts of the case are as below:-

The petitioner herein is the landlord of the premises under which, the respondent-complainant was lessee. At the time of entering the lease on 07.04.2001, a sum of Rs.1,50,000/- was given to the petitioner as advance, by the respondent. Due to disconnection of the electrical service on the recommendation of Tamilnadu Pollution Control Board, the respondent vacated the premises and demanded the money advanced by him. The petitioner herein has given a cheque for Rs.1,50,000/- dated 15.03.2009. But, on presentation of the cheque for collection, it was bounced with an endorsement “funds insufficient”. Therefore, the respondent caused a statutory notice calling upon the petitioner to pay the cheque amount. Even, after lapse of 15 days, the petitioner did not pay the cheque amount. Hence, the complaint.



3. Before the trial Court, the complainant has examined 4 witnesses and marked 11 exhibits to prove the complaint. The petitioner / accused has examined two witnesses. The trial Court held the petitioner guilty of offence under Section 138 of Negotiable Instruments Act, sentenced him to undergo one year rigorous imprisonment and to pay a sum of Rs.1,75,000/- as compensation, failing which, three months simple imprisonment. Being aggrieved by the conviction and sentence, accused preferred appeal in C.A.No.64 of 2016 and the same was dismissed by the lower appellate Court. Hence, the present revision petition.

4. Learned counsel appearing for the petitioner / accused submitted that the Courts below failed to consider the fact that the complainant who has polluted the environment was prevented from carrying on his business, by the Pollution Control Board which forced him to vacate the premises. The Pollution Control Board has imposed penalty of Rs.2,33,000/- liable to be paid by the land owner, the petitioner herein. Further, while vacating the premises, the complainant has not cleared the electricity bill and also caused damage to the building, which he is liable to



be compensated. Therefore, the advance money has been appropriated towards the penalty, electricity charge due and damages caused to the building. The Courts below failed to consider the fact that the complainant vacated the premises on 24.05.2006 whereas the cheque alleged to be given towards the refund of advance dated 15.03.2009, almost three years after vacating the premises which is highly unbelievable.

5. This Court, while exercising the revisional jurisdiction have very limited power to interfere the concurrent finding of the facts, by the Courts below. More so, in a case under Section 138 of Negotiable Instruments Act, the admission of the signature found in the cheque leads to a presumption of enforceable liability. That apart, it is an admitted case of the petitioner herein that he received advance of Rs.1,50,000/- from the complainant while entering into a lease agreement. Though, through the witnesses, apportioning the advance amount towards electricity due and damages pleaded, in the absence of documentary evidence, the Courts below have rightly disbelieved the contention of the petitioner.



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6. In the said circumstances, this Court holds that there is no error or illegality in the judgment of the Courts below as far as the facts are concerned. While considering the sentence, the trial Court has sentenced the petitioner to undergo one year rigorous imprisonment and pay compensation of Rs.1.75 lakhs.

7. Pending revision, as a pre-condition, a sum of Rs.50,000/- been deposited by the petitioner herein in STC No.1770 of 2009 before the Judicial Magistrate-I, Tirupur on 05.01.2018. Hence, it will be appropriate to modify the sentence and direct the petitioner herein to pay a total compensation of Rs.1.75 lakhs and in default, 3 months simple imprisonment. The deposit of Rs.50,000/- in the STC No.1770 of 2009 is permitted to be withdrawn by the complainant / respondent. The balance of Rs.1.25 lakhs to be deposited within a period of six weeks from today. On such deposit being made, the respondent / complainant shall be permitted to withdraw the same.



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8. In the result, this Criminal Revision Case is partly allowed.

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AT

Index : Yes/No

Speaking / Non-speaking

To

1.The II Additional District & Sessions Judge, Tirupur.

2.The Judicial Magistrate-I, Tirupur.

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