IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.333 of 2017
and Crl.M.P.No.3163 of 2017

D.Murugan ..Petitioner/Accused

Vs.

V.S.Mujeeb ..Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 307 and 401 of Criminal Procedure Code, 1973, praying to set aside the judgment passed by the learned Principal District and Sessions Judge, Tiruvallur in C.A.No.80 of 2015, dated 08.09.2015 confirmed by the learned Judicial Magistrate, Fast Track Court (Magisterial level), Ambattur in S.T.C.No.233 of 2014, dated 30.09.2015.

For Petitioner : No appearance

For Respondent : No appearance

O R D E R

The Revision petitioner herein is the accused in the private complainant initiated against him under Section 138 of the Negotiable Instruments Act.

2. The sum and substance of the complaint is that the petitioner herein borrowed a sum of Rs.4,00,000/- from the complainant to meet out his business expenses and to discharge the said loan, he gave a cheque bearing No.000106 at Karur Vysya Bank Ambattur, dated 04.09.2014. When the cheque was presented by the complainant for collection, same got returned with an endorsement 'insufficient fund'. On receipt of the memorandum and the cheque on 6.09.2014, the complainant caused statutory notice to the petitioner herein on 09.09.2014. The same was returned as 'unclaimed' and hence the private complaint was lodged before the Judicial Magistrate, Fast Track Court (Magisterial level), Ambattur.

3. On the side of the complainant, three (3) witnesses were examined as PW.1 to PW.3 and six (6) documents were marked as

Ex.P.1 to Ex.P.6. The petitioner herein mounted in the witness box and deposed as defence and marked five (5) documents as Ex.R1 to Ex.R5. The same was taken on file for summary trial in S.T.C.No.233 of 2014.

4. The defence of the petitioner herein is that he did not borrow any money from the complainant. He had transaction only with one Babu and for the said loan from Babu, he gave a subject cheque for security. When Babu demanded exorbitant interest, he gave a complaint to the police. The same has been received and C.S.R. receipt was given to him. Therefore, the cheque given to Babu as security has been misused by presenting the same by filling up the name of the complainant and the amount. The statutory notice was sent to wrong address knowingly, so that the notice will not be duly served to him.

5. The trial Court considering the defence held that the alleged transaction with said Babu is of the year 2011 and the complaint against the said Babu for claiming exorbitant interest has no relevance to the subject transaction. Regarding the allegations that the statutory notice was sent to the wrong address malafidely disbelieved by the trial Court after verifying the Court record that when the summons from the Court sent to the very same address, the accused received it and the postal endorsement of the statutory notice also does not say the 'addressee left' but only intimation left 'unclaimed'. Regarding the financial capacity of the complainant to advance Rs.4,00,000/- as loan, the trial Court taking note of the fact that during the cross examination, the complainant said that he had paid Rs.4,00,000/- in instalments and therefore, that may not be the ground to shift the burden of proof.

6. Considering the statutory presumption under Section 118 of Negotiable Instruments Act, the trial Court found the petitioner herein guilty of offence under Section 138 of Negotiable Instruments Act, convicted and sentenced him to undergo 3 months Simple Imprisonment and imposed compensation of Rs.4,00,000/-.

7. Aggrieved by the said judgment of conviction and sentence, the petitioner herein preferred an appeal and the same came to be confirmed in addition, the appellate Court modified the period of sentence from 3 months Simple Imprisonment to 1 month.

8. The petitioner aggrieved by the concurrent findings of the Courts below preferred this Criminal Revision Case claiming that the finding of the Court below is contrary to law and vague of evidence and failed to consider that the cheque was issued only as security for the loan obtained and not towards discharge

of any enforceable debt and also the petitioner arguing on the point that the complainant has failed to prove the source of income to advance the loan of Rs.4,00,000/- . In such circumstances, the Courts below ought not to have drawn presumption against the petitioner and convicted him.

9. This Criminal Revision Case has been listed time and again since 2017, but for one pretext or the other, the petitioner herein was not ready to get along with the case and at last the counsel, who filed the revision petition, failed to represent the case and therefore, this Court was forced to appoint a legal aid counsel and he had appeared before this Court once and got adjournment. Thereafter, he also did not turn up to represent the case.

10. In the said circumstances, this Court on its own gone through the papers and find that there is no infirmity, illegality or perversity in the finding of the Courts below, which has held that the subject cheque has been signed by the petitioner herein and the defence that it was given as a security for the loan borrowed from Babu, has not been established. In the said circumstances, the statutory presumption under Sections 118 and 139 of Negotiable Instruments Act squarely fall against the petitioner and therefore, there is no reason to interfere the well considered order of the Courts below.

11. As a result, this Criminal Revision Case is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Principal District and Sessions Judge, Tiruvallur.

2.The Judicial Magistrate,
Fast Track Court (Magisterial level), Ambattur.

Crl.R.C.No.333 of 2017

AJS(CO)
SB(27/06/2022)