



Crl.R.C.No.562 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.R.C.No.562 of 2017

O.H.Babu

.. Petitioner

/versus/

C.Gunasekaran

.. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment and conviction dated 14.03.2017 made in C.A.No.142 of 2016 on the file of I Additional District and Sessions Judge, Erode, confirming the judgment dated 03.08.2016 made in S.T.C.No.341 of 2015 on the file of the Judicial Magistrate (F.T.C.No.1) Erode.

For Petitioner :Mr.M.Vignesh for
Mr.C.S.Saravanan

For Respondent :Mr.K.A.Vimal Kumar

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Crl.R.C.No.562 of 2017

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ORDER

The criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 alleging that the revision petitioner herein borrowed a sum of Rs.4,22,500/- on 18.08.2015 to meet his personal expenses. To discharge the same, he gave two post-dated cheques. One for Rs.2,00,000/-, dated 03.10.2014 and another for Rs.2,22,500/-, dated 18.02.2015. The cheque dated 18.02.2015 presented for collection but it was returned with an endorsement “Insufficient Fund”. Hence, after causing Statutory Notice dated 07.03.2015 and on receipt of reply on 21.03.2015, a private complaint under Section 138 r/w 142 of the Negotiable Instruments Act, 1881 has been filed. The said complaint was taken on file in S.T.C.No.341 of 2015 by the Judicial Magistrate, Fast Track Court No.1, Erode.

2. To prove the complaint, the complainant examined himself as PW-1 and marked 9 exhibits. In the course of cross examination, Ex.D1 marked on behalf of the accused. The trial Court, on appreciating



Crl.R.C.No.562 of 2017

the evidence held that the issuance of cheque and the signature found in the cheque are admitted by the accused. Since the fundamental facts are not disputed, the presumption under Section 138 of the Negotiable Instruments Act, 1881 falls on the accused. But, the accused has not let in any evidence to probabalise that the cheque was not issued towards any legally enforceable debt and therefore, the trial Court found him guilty and sentenced him to undergo 6 months S.I and pay a fine of Rs.5,000/- in default, to undergo 15 days S.I.

3. Aggrieved by the said judgment, the revision petitioner herein preferred an appeal in Crl.A.No.142 of 2016 before the First Additional District and Sessions Judge, Erode. The learned First Appellate, Court on appreciation of evidence, dismissed the appeal and confirmed the trial Court's judgment.

4. In the Revision Petition, it is contended that the complainant has failed to prove his source of income and not proved the cheque issued towards legally enforceable debt. The cheque was issued as security



Crl.R.C.No.562 of 2017

without misused by the complainant and the same has not been considered by the Courts below.

5. However, on perusing the complaint and established the cheque was issued for legally enforceable debt, the complainant has mounted the witness box and gave evidence, besides marked 9 exhibits. Out of which Ex.P6 to Ex.P9 are the Income Tax Account and Pan Card of the complainant. The accused during the cross examination of PW-1 has introduced Ex.D1, which is the Income Tax Account of the petitioner/complainant for the accounting year 2015-2016.

6. It is contended by the learned counsel appearing for the revision petitioner/accused that the alleged loan of Rs.4,22, 500/- to the accused was not reflected in the Income Tax Return. It is marked as Ex.D1. Therefore, the case of the complainant has to be disbelieved. The Courts below, taking note of the other Exhibits namely, Ex.P6 to Ex.P9 which are the documents related to the Income Tax Return and Pan Card, had observed that the complainant is a man of means and has Income



Crl.R.C.No.562 of 2017

Assessee. Whether the loan given to the accused is reflected in his account or not. The fact that the cheque in dispute was drawn by the accused is not denied and the presumption under Section 139 of the Negotiable Instruments Act, 1881 has not been rebutted. Therefore, the Courts below convicted the accused. In this connection, the perusal of the reply notice given by the accused person indicates that he has denied the very execution of the cheque and has claimed that the subject cheque is a forged and a created document with an ulterior motive and he suspected the signature found in the alleged cheque as forged. While taking the stand, the cheque is a forged instrument and failed to prove the said defence, the grounds raised in the revision, which are clearly on facts, have concurrently held by the Courts below against the revision petitioner, this Court finds no merit in the revision.

7. The learned counsel appearing for the petitioner submitted that pursuant to the interim order passed by this Court on 10.04.2017, the revision petitioner has deposited the cheque amount of Rs.2,22,500/- to the credit of the account in S.T.C.No.341 of 2015, on 18.05.2017.



Crl.R.C.No.562 of 2017

Therefore, taking note of the fact that the cheque amount has been deposited, the sentence imposed on the petitioner may be modified.

8. This Court taking into consideration the above said submission, the sentence imposed by the trial Court is modified to the effect that the petitioner is directed to pay a fine of Rs.2,25,000/-, which shall be given as compensation to the complainant, instead of imprisonment of 6 months RI and fine of Rs.5,000/-. Accordingly, the conviction of the petitioner by the Courts below is confirmed and but the sentence imposed on him is modified to that effect that the petitioner is directed to pay a sum of Rs.2,22,500/- as compensation to the complainant/respondent. The money deposited in the STC account by the petitioner herein shall be permitted to be withdrawn by the respondent/complainant on filing appropriate application. The trial Court, where the amount of Rs.2,22,500/- is deposited in the credit of S.T.C.No.341 of 2015 on the file of the Judicial Magistrate, Fast Track Court No.1, Erode, is directed to pay a sum of Rs.2,22,500/- to the respondent, based on appropriate application.



Crl.R.C.No.562 of 2017

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9. In fine, **the Criminal Appeal is partly allowed.**

08.11.2022

Index:yes/no

Speaking order/non speaking order
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To

- 1.I Additional District and Sessions Judge, Erode.
- 2.The Judicial Magistrate (F.T.C.No.1) Erode.



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Crl.R.C.No.562 of 2017

DR.G.JAYACHANDRAN,J.

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Crl.R.C.No.562 of 2017

08.11.2022