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Crl.R.C.No.691 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM

THE HON-BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.691 of 2017

Mani

... Petitioner

VS.

Devaraj (Died)
Muthukumar
(Impleaded as a complainant as per order
in C.M.P.No.1719/2014 since
the original complainant died)
South Velliyampalayam
A.Anumanpalli Post, Erode Taluk

... Respondent

Prayer: Criminal Revision case is filed under Section 397 r/w. 401 of Criminal Procedure Code to call for the records pertaining to the order of the 2nd Additional District Sessions Judge, Erode in Crl.A.No.67 of 2016 order dated 22.02.2017 against the order in S.T.C.No.178/2013 on the file of Judicial Magistrate, Fast Track Judge No-1 Erode dated 03.03.2016 and set aside the same.

For Petitioner : Mr.K.B.Vivekanandhan

For Respondent : Mr.C.S.S.Pillai
Legal Aid Counsel

O R D E R



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The petitioner/accused in S.T.C.No.178 of 2013 was convicted for an offence under Section 138 of Negotiable Instruments Act. The respondent had filed a private complaint under Section 138 of Negotiable Instruments Act against the petitioner. The learned Judicial Magistrate, Fast Track Judge No-1, Erode by Judgment dated 03.03.2016 convicted the petitioner and sentenced him to six months Simple Imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) in default, to suffer 15 days Simple Imprisonment.

2. Aggrieved by the said conviction and sentence, the petitioner had preferred an appeal before the learned II Additional District and Sessions Judge, Erode in C.A.No.67 of 2016. The Sessions Court vide Judgment dated 22.02.2017 dismissed the appeal by confirming the conviction and sentence passed by the trial Court, against which the present petition has been preferred by the petitioner.

3. During trial, on the side of prosecution, one witness was examined as P.W.1 and eight (8) documents were marked as Ex.P1 to Ex.P8. On the side of the defence, one witness was examined as D.W.1 and two (2) documents were marked as Ex.D1 and Ex.D2. The trial Court, on conducting the elaborate trial, convicted the petitioner and ordered sentence vide Judgment dated 03.03.2016



in S.T.C.No.178 of 2013. As against the Judgment of the trial Court, an appeal was preferred by the petitioner before the lower appellate Court in C.A.No.67 of 2016. The lower Appellate Court confirmed the conviction and dismissed the appeal.

4.For the sake of convenience, the petitioner and the respondent are referred to as accused and complainant as per the original complaint.

5.The accused herein had taken a loan of Rs.4,00,000/- (Rupees Four Lakhs only) from the complainant on 20.10.2012 to tide over his family and business expenses. At that time, the accused had issued a cheque for Rs.4,00,000/- dated 23.11.2012 bearing Cheque No.167541 drawn on Indian Overseas Bank, Vellakovil Branch. Thereafter, when the cheque was presented for encashment, the same was returned on 27.11.2012 with an endorsement “Exceeds Arrangement”. The complainant had examined himself as P.W.1. And Indian Overseas Bank Cheque has been marked as Ex.P.1. The Bank return Memo is marked as Ex.P.2. Thereafter, a Statutory Notice was issued on 05.12.2012 and marked as Ex.P.3. The Postal Acknowledgment is marked as Ex.P.4. The accused on receipt of the notice had sent a reply on 25.12.2012, which is marked as Ex.P.5. Thereafter, the Rejoinder has been sent on



07.01.2013 and marked as Ex.P.6. The Postal Acknowledgment is marked as Ex.P.7. During the pendency of the trial, the complainant had passed away on 02.09.2013 and his son Muthukumar was substituted in his place and continued the prosecution. The other legal heirs of Devaraj had given power in favour of Muthukumar, which power has been marked as Ex.P.8. One Periyaswamy, the Assistant Manager of Canara Bank has been examined as D.W.1 and Ex.D.1 and Ex.D.2 were marked on the side of the defence. The trial Court on conclusion of the trial convicted the accused as stated above. The Lower Appellate Court dismissed the appeal and confirmed the trial Court Judgment.

6.The primary contention of the accused is that even at the earliest point of time, the accused had received the statutory notice dated 05.12.2012, a reply notice (Ex.P.5) has been sent to the complainant. Wherein, he had categorically denied that the accused had taken loan from the complainant. The accused had taken loan only from one Dhandapani who was running a finance company as Balaji Finance. At the time of taking loan of Rs.2,00,000/- (Rupees Two Lakhs only) three cheques were issued for security purpose and another amount of Rs.2,00,000/- (Rupees Two Lakhs only) was obtained and for which three more cheques have been issued. Similarly, the present complainant had received the



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subject cheque from Dhandapani and had filed this petition. There is no loan or discharge of any liability between the accused and the complainant. Further, the accused had lodged a complaint before the Superintendent of Police, Tiruppur against the complainant for misusing the cheque handed over to him. Since, no action has been forthcoming, the accused had filed a direction petition before this Court in Crl.O.P.No.25188 of 2012. This would clearly show that the accused had no transaction with the complainant. He further submitted that the complainant was cross examined specifically on this aspect. The complainant's father Devaraj, the original complainant had no loan in his name and it was his father who was owning eight acres of land and it was a joint family property and some agricultural activities were going on in that land. Further, the said Devaraj had no independent business and income of his own which would clearly prove that the said Devaraj has nothing to do with the money lending and filing a case on behalf of Dhandapani. He further submitted that the Devaraj had two wives, his first wife viz.Ponnathal had one daughter viz. Kavitha and said Ponnathal and Kavitha have not given any power to Muthukumar, the present complainant herein. In view of the same, Ex.P.8 is of no consequences and the said Muthukumar cannot proceed with the case as a complainant. The trial Court as well as the lower Appellate Court failed to consider these aspects. On this ground alone, the conviction has to go and the



revision has to be allowed.

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7.Mr.C.S.S.Pillai, the learned counsel appearing for the respondent submitted that in this case, though the accused is projecting his defence right from the stage of reply to the statutory notice that he had taken loan only from one Dhandapani and not from the complainant. The said Dhandapani has not been examined as a witness and no steps have been taken in this regard. Further, no documents have been produced to show that the loan amount which has been taken from Dhandapani has been discharged. A cheque which has been issued to the said Dhandapani, that liability had already been discharged. The trial Court considered all these aspects in this Judgment at paragraphs 14, 15 and 16 and had a detail discussion and came to the finding that the accused had not taken any appropriate steps to probablise the defence by examining the witnesses or producing any documents, but making defence in air. During the cross examination, the suggestion is that there is no reason or necessity for the accused to take any loan from the Dhandapani which would clearly expose the hollowness in the defence of the accused. The trial Court had considered all these aspects and convicted the accused. The lower Court independently assessed the evidence and confirmed the conviction. Further in this case, the



accused is unable to dislodge the presumption in any manner. Hence, he prayed that the revision has to be dismissed.

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8. Heard both sides.

9. Considering the submissions and on a perusal of the materials, it is seen that the accused is facing trial for the offence under Section 138 of Negotiable Instruments Act and the statutory presumption having proved. The accused though at the initial stage of his reply to the statutory notice had stated that he had taken loan from one Dhandapani. He had not taken any steps to examine the said Dhandapani or bring in any material to probablise that the loan was taken from the said Dhandapani has been discharged, except making a broad defence and no other material produced. The trial Court considered this aspect in detail and finding the hollowness in the defence of the accused rejected the same. The suggestion put forth is that there is no need or necessity to take any loan from the said Dhandapani which clearly expose the hollowness in the accused claim. The accused had not denied the issuance of the cheque or his signature in the cheque, his only defence is that, cheque issued to Dhandapani and not to respondent/complainant. No steps have been taken to dislodge the initial presumption and to probablise his defence in any manner.



Both the Courts below had given concurrent findings and conviction against the petitioner.

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10. In view of the same, this Court has no reason to interfere with the finding of the Courts below. Hence, the Criminal Revision is dismissed. The Trial Court to take steps to secure the petitioner/accused to undergo the conviction and sentence.

11. This Court appreciates Mr.C.S.S.Pillai appointed as legal aid counsel for the respondent in rendering his sincere efforts in this regard.

09.12.2022

Index : Yes/No
Internet : Yes/No
dk

To

1. The 2nd Additional District Sessions Judge
Erode.

2. The Judicial Magistrate,
Fast Track Judge No-1
Erode.



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M.NIRMAL KUMAR,J.

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