



Crl.R.C.No.1147 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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G.Logu, (M/Age 30)
S/o.Govindaraj

... Petitioner

Versus

N.Prabhu

... Respondent

Criminal Revision Case filed under Section 397 read with 401 Code of Criminal Procedure, to set aside the conviction imposed in the Judgment dated 24.07.2019 made in C.A.No.256 of 2018 on the file of the II Additional District and Sessions Judge, Erode confirming the conviction imposed in the Judgment dated 19.03.2018 made in S.T.C.No.448 of 2017, on the file of the Judicial Magistrate FTC-I, Erode, by allowing this Criminal Revision.

For Petitioner : Ms.G.Priya Vadhana,
for Mr.M.Guruprasad

For Respondent : Notice Served



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ORDER

This Criminal revision is filed by the petitioner/accused, aggrieved by the conviction and sentence imposed on him for the offence under Section 138 of the Negotiable Instruments Act, 1881, by the Judgment of the Learned Judicial Magistrate Fast Track Court, Erode, dated 19.03.2018 in S.T.C.No.448 of 2017 and the same being confirmed by the II-Additional District and Sessions Judge, Erode, by the Judgment dated 24.07.2019 in C.A.No.256 of 2018.

2.Heard *Ms.G.Priya Vadhana, for Mr.M.Guruprasad*, learned Counsel appearing for the petitioner. Even though notice was served, the respondent has not appeared.

3.The learned Counsel for the petitioner taking this Court through the complaint of the petitioner and the evidence of P.W.1 would submit that in this case, the complainant himself has admitted that he was only in a rented house and therefore, he has not produced any proof for his capacity to pay the sum of Rs.45,000/-. Secondly, even in the cross-examination, he has admitted that he was the part of the Chit transaction,



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which is run by one *Ravi*, and also the petitioner herein. When suggestion was made that this Cheque was issued only towards that transaction, though the same is falsely denied by the complainant, from the very fact that he admitted that he was the part of the Chit transaction and the same was not mentioned in the complaint and from the very fact that there was no other promissory note or any other supporting document, the accused has rebutted the presumption under Section 138 of the Negotiable Instruments Act, and therefore, the Trial Court as well as the First Appellate Court ought to have seen that in the absence of any further proof by the complainant for advancing the sum of Rs.45,000/- and ought to have held that there is no enforceable debt and ought to have acquitted the petitioner.

4.I have considered the rival submissions and perused the material records of this case.

5.In this case, even as per the suggestion made by the petitioner in the cross-examination of P.W.1 is that there was a Chit which is run by the petitioner and yet another person by name *Ravi*. The complainant was



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taking part of in one of the Chits. After completion of 10 months, towards maturity of amount, the Cheque was given. Therefore, even as per the cross-examination, the amount was given towards some other liability, therefore, the basis for the argument of the learned Counsel for the petitioner that there is no legally enforceable liability falls to ground.

6. When the petitioner/accused has not even issued reply notice, questioning the capacity of the complainant to lend the sum of Rs.45,000/-, I am of the view that the said argument of the petitioner, cannot stand. In view thereof, the Trial Court as well as the First Appellate Court have rightly convicted the accused for the offence under Section 138 of the Negotiable Instruments Act.

7. As far as the sentence is concerned, the learned Counsel for the petitioner submitted that considering the age of the petitioner and the nature of transaction would plea that the petitioner/accused in any event may be permitted to pay the Cheque amount.



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8.Considering the submissions made by the learned Counsel for the petitioner, and considering the fact that the petitioner was 30 years old at the time of filing this revision, I am of the view that the sentence imposed on him by the Trial Court as well as the First Appellate Court can be modified. In view thereof, the Criminal Revision is partly allowed on the following terms:-

(i) The conviction of the petitioner by Judgment dated 19.03.2018 in S.T.C.No.448 of 2017 by the Trial Court, and which was confirmed by the First Appellate Court by Judgment dated 24.07.2019 in C.A.No.256 of 2018, in respect of the offence under Section 138 of the Negotiable Instruments Act, is confirmed;

(ii) The sentence imposed on the petitioner is modified and the petitioner is directed to pay a fine of Rs.50,000/-, within a period of eight weeks from the date of receipt of copy of this order;

(iii) It is made clear that there will be no further extension of time which will be granted for depositing the fine amount;



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(iv) In default of payment of fine amount the petitioner shall undergo Simple Imprisonment for a period of three months;

(v) Out of the fine amount paid by the petitioner/accused, the sum of Rs.45,000/-, shall be paid out to the respondent/complainant, without insisting on any formal application and only upon verification and identity of the respondent.

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Index : yes/no
Speaking/Non-speaking order

klt

To

- 1.The II Additional District and Sessions Judge, Erode.
- 2.The Judicial Magistrate FTC-I, Erode.



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D.BHARATHA CHAKRAVARTHY, J.

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