



WEB COPY



Crl.R.C.No.1433 of 2019

]]]]]]]IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1433 of 2019

P.Manimaran

... Petitioner

Vs.

R.Shanmugasundaram

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to call for the records in C.A.No.165 of 2017 on the file of the Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Erode and set aside the order dated 19.11.2019 made in C.A.No.165 of 2017 confirming the conviction and sentence imposed in S.T.C.No.20 of 2016 on the file of the learned Judicial Magistrate cum Fast Track Court-I, Erode dated 08.06.2017 and acquit the petitioner/accused of the charges framed against him.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.C.S.Saravanan



Crl.R.C.No.1433 of 2019

WEB COPY

ORDER

This Criminal Revision case has been filed as against the Judgment passed in C.A.No.165 of 2017 dated 19.11.2019 on the file of the Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Erode, confirming the Judgment passed in S.T.C.No.20 of 2016 dated 08.06.2017 on the file of the learned Judicial Magistrate cum Fast Track Court-I, Erode, thereby convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The case of the respondent is that he is doing software development and project work in the name and style of Genius systems. The petitioner is running a transport business in the name of Sri Rajaganapathy Transport. While being so, on 01.07.2015, the petitioner borrowed a sum of Rs.6,00,000/- for his urgent business needs. To discharge the same, he had issued a cheque. It was presented for collection and the same was returned dishonored for the reason "Funds



Crl.R.C.No.1433 of 2019

Insufficient”. Immediately, after causing legal notice, the respondent lodged a complaint.

3. On the side of the respondent, he examined P.W.1 and P.W.2 and marked Exs.P.1 to P.15. On the side of the petitioner, he examined D.W.1 and marked Ex.D1. On a perusal of oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and also awarded compensation of cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed confirming the order passed by the Trial Court. Hence, this revision.

4. The learned counsel for the petitioner would submit that there was no legally enforceable debt in favour of the respondent and as such the petitioner never issued any cheque for any legally enforceable debt. The said cheque was presented not for any legally enforceable debt, since there was no liability on the part of the petitioner in favour of the



Crl.R.C.No.1433 of 2019

respondent. He further submitted that the respondent had no source of income to lend such a huge amount of Rs.6,00,000/-. In the cross examination of P.W.1 he categorically admitted that his income was so meager and he was also not an income tax assessee. While being so, the petitioner never borrowed any amount from the respondent and no cheque was issued for any legally enforceable debt.

5. In fact, after receipt of statutory notice, the petitioner issued reply notice dated 04.11.2015, which was marked as Ex.P6 and categorically denied all the allegations made by the respondent. Though, the respondent discharged his initial burden, it is rebuttable in nature and accordingly the petitioner categorically rebutted the presumption arising out of Section 139 of Negotiable Instruments Act. The petitioner also examined the respondent's Bank Manager as D.W.1. She categorically deposed that on the date of alleged borrowal of amount, there was no much of money possessed in his account. That apart, the respondent categorically admitted that he was not accounted the money which was allegedly lent to the petitioner. It was black money. Therefore, the alleged



cheque was not issued for any legally enforceable debt.

6. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court of India reported in **2004 12 SCC 83** in the case of ***G.Pankajakshi Amma and others Vs.Mathai Mathew (DEAD) through Lrs and another***, in which it was held that the transactions were to be unaccounted transactions. If there are unaccounted transactions, then they are illegal transactions. No Court can come to the aid of the party in an illegal transaction. She also relied upon the Judgment to substantiate the contention of no legally enforceable debt, reported in **2015 1 SCC 99** in the case of ***K.Subramani Vs. K.Damodara Naidu***, in which it was held that the presumption mandated under Section 139 of Negotiable Instruments Act includes a presumption that there exists a legally enforceable debt or liability and that is a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.



Crl.R.C.No.1433 of 2019

WEB COPY

7. A perusal of records revealed that admittedly the petitioner was running a transport business in the name and style of Sri Rajaganapathy Transport and the respondent was doing software development and project work in the name and style of Genius systems. While being so, the petitioner borrowed a sum of Rs.6,00,000/-. In order to repay the said amount, the petitioner issued a cheque which was marked as Ex.P1. It was presented for collection and the same was returned dishonored for the reason “Funds Insufficient”. The respondent caused legal notice and the same was marked as Ex.P3. On receipt of the same, the petitioner issued a reply notice, which was marked as Ex.P6.

8. A perusal of Ex.P6 revealed that the petitioner denied the alleged issuance of cheque for the reason that it was stolen by the respondent for which, he was about to lodge a complaint as against the respondent. Though, the petitioner had taken specific stand that the said cheque was stolen by the respondent, he did not lodge any complaint so far. Even after filing the complaint under Section 138 of Negotiable Instruments Act, the petitioner did not take any steps to take action as



Crl.R.C.No.1433 of 2019

against the respondent. He never denied the signature found in the cheque. Therefore, the respondent proved the initial burden arising out of Section 138 of Negotiable Instruments Act.

9. Though, the petitioner raised ground that the respondent have no source of income to lend such a huge amount, the petitioner never raised that ground in his reply notice. He has to set up his defence from the reply notice. That apart, he has to make a statement under Section 313 of Cr.P.C., about the source of income. Admittedly, the petitioner failed to state anything in his reply notice and also he failed to make any statement under Section 313 of Cr.P.C.

10. In this regard, it is relevant to rely upon the judgment reported in **2022 SCC OnLine SC 302** in the case of **Tedhi Singh Vs. Narayan Dass Mehant**, in which the Hon'ble Supreme Court of India held that in the case under Section 138 of the NI Act, the complainant need not to show in the first instance that he had capacity to lend loan, unless a case is set up in the reply notice to the statutory notice, that the



Crl.R.C.No.1433 of 2019

complainant did not have the wherewithal, it cannot be expected the complainant to initially lead evidence to show that he had the financial capacity. However, the accused had the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing out the materials produced by the complainant himself. Further he must establish the case that the complainant has no source of income even in the statement given under Section 313 of Cr.P.C.

11. Therefore, the Judgments cited by the learned counsel for the petitioner are not helpful to the case on hand. Though, the respondent failed to account the amount which was borrowed by the petitioner, it cannot be said that it is an illegal money. If at all, the respondent evaded any income tax, the authorities concerned has to look into that. The Hon'ble Supreme Court of India held in the case of recovery of money,



Crl.R.C.No.1433 of 2019

whereas in the case on hand, the respondent discharged his initial burden as contemplated under Section 138 of Negotiable Instruments Act.

12. Therefore, both the Courts below rightly found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and this Court finds no infirmity or illegality in the orders passed by the Courts below and this revision is liable to be dismissed.

13. However, the learned counsel for the petitioner would submit that already the petitioner had paid 50% of the cheque amount and he is ready and willing to settle the remaining amount directly to the respondent by way of demand draft, within a period of four weeks.

14. If the petitioner settled the remaining cheque amount directly to the respondent, within a period of four weeks from today i.e. 31.10.2022, the conviction and sentence imposed by the Trial Court stands set aside.



Crl.R.C.No.1433 of 2019

WEB COPY

15. On such payment, the respondent is permitted to withdraw the amount which was already deposited by the petitioner before the Trial Court by way of filing appropriate application. It is made clear that the Trial Court shall permit the respondent to withdraw the same, without ordering any notice to the petitioner.

16. Accordingly, this Criminal Revision case stands disposed.

31.10.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mn

To

1. The Sessions Judge, Magalir Neethi Mandram, Fast Track Mahila Court, Erode.

2. The Judicial Magistrate cum Fast Track Court-I, Erode.



WEB COPY



Crl.R.C.No.1433 of 2019

G.K.ILANTHIRAIYAN, J

mn

Crl.R.C.No.1433 of 2019

31.10.2022