



Crl.RC.No.1477 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM:

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

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E.P.Ravi

...

Petitioner

Versus

Adhi Narayanan

...

Respondent

PRAYER: Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure to set aside the order dated 20.11.2019 in Crl.A.No.56 of 2019 on the file of II Additional Sessions Judge, Tindivanam, Villupuram District confirming the order dated 19.03.2019 in CC.No.1 of 2017 on the file of the Judicial Magistrate, Gingee, Villupuram District.

For Petitioner : Mr.R.Rajarajan

For Respondent : Mr.P.Singaram



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ORDER

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This criminal revision is directed as against the judgment dated 20.11.2019 passed in Crl.A.No.56 of 2019 on the file of II Additional Sessions Judge, Tindivanam, Villupuram District, thereby confirming the order of conviction dated 19.03.2019 passed in CC.No.1 of 2017 on the file of the Judicial Magistrate, Gingee, Villupuram District, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that during the month of August, 2016, the petitioner borrowed a sum of Rs.8,00,000/- by cash and promised to repay the said amount. In order to repay the said amount, he issued cheque for the said sum and the same was presented for collection, which was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged complaint.

3. On the side of the respondent, he was examined as PW1 and



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marked Ex.P1 to Ex.P5. On the side of the petitioner, no one was examined and no documents were marked. On perusal of oral and documentary evidence, the trial court found him guilty for the offence punishable under Section 138 of NI Act and sentenced him to undergo simple imprisonment for a period three months and also awarded compensation of Rs.6,00,000/-. Aggrieved by the same, the petitioner preferred appeal and the same was also dismissed by the first appellate court and confirmed the order of conviction.

4. The learned counsel for the petitioner submitted that except the cheque, no other documents were produced by the respondent before the trial court to establish the source of alleged payment of loan to the tune of Rs.8,00,000/-. In fact, even according to the respondent, he accepted part payment made by the petitioner. Even then, the respondent presented cheque for the entire amount. Further, at the time of borrowal of loan, the petitioner issued only pro note and no cheque was issued. Therefore, the respondent failed to prove the case as contemplated under Section 138 of NI Act.

5. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.



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6. On perusal of the records, revealed that the petitioner never denied the signature of the cheque and issuance of cheque. After borrowal of loan, the petitioner issued cheque and the same was presented for collection. It was returned on the ground that 'funds insufficient'. Immediately, the respondent caused legal notice and the same was returned with endorsement 'not claimed'. Further, the petitioner categorically admitted his liability. He made statement under Section 313 of Cr.P.C. that he needs further time to settle the amount. Further, the respondent admitted that so far the petitioner paid a sum of Rs.1,60,000/-. Therefore, the courts below rightly awarded compensation after reducing the amount which was paid by the petitioner. Since the petitioner failed to deny the issuance of cheque, then the presumption is in favour of the person who hold the cheque. Though the said presumption is rebuttable presumption, the petitioner failed to rebut the same. While being so, the presumption under Sections 118 sub clause (a) and 139 of NI Act regarding the passing of consideration and the cheque has been issued by the petitioner to discharge the legally enforceable debt has been established by the respondent. Therefore, this Court finds no infirmity



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or illegality in the orders passed by the courts below.

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7. Accordingly, this criminal revision is dismissed and the respondent is permitted to withdraw the amount which was already deposited by the petitioner before the trial court.

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order
lok

G.K.ILANTHIRAIYAN. J,

lok

To

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- 1.The II Additional Sessions Judge,
Tindivanam, Villupuram District
- 2.The Judicial Magistrate,
Gingee, Villupuram District.

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