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Crl.R.C.No.1209 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

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

Crl.R.C.No.1209 of 2018

J. Gurumani Raj

... Petitioner

Vs.

M/s. Tulsian Refinery Pvt. Ltd.,
Represented by its Managing Director,
Ajay Kumar Tulsian,
No-49, Elephant gate Street,
Chennai-600 079.

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records and set aside the order passed in Crl.A.No.340 of 2017 (on the file of the Principal Sessions Judge, Chennai) and confirming the order passed in C.C.No.10986 of 2014 on the file of the learned Metropolitan Magistrate Fast Track Court II at Allikulam dated 26.10.2017.

For Petitioner : Mr.R.Vivekananthan
For Respondent : Mr.Siddharth Bahety

ORDER

This Criminal Revision case has been filed as against the Judgment passed in Crl.A.No.340 of 2017, dated 27.09.2018, on the file of the Principal Sessions Judge, Chennai, thereby confirmed the order passed in C.C.No.10986 of 2014



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dated 26.10.2017, on the file of the learned Metropolitan Magistrate Fast Track Court II at Allikulam, 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 prosecution is that the petitioner is the sole Proprietor of his company. Towards the supply of refined sunflower oil, the respondent raised various invoices on the petitioner. On such invoices, there is an outstanding of Rs.3,50,000/- due, payable by the petitioner to the respondent. In order to settle the said dues, the petitioner issued a cheque for a sum of Rs.3,50,000/- and the same was presented for collection. However, it was returned dishonoured for the reason 'payment stopped by drawer'. After causing statutory notice, the respondent lodged a complaint.

3. On the side of the respondent, he was examined as P.W.1 and marked Exs.P1 to P6. On the side of the petitioner, no one was examined and no document was marked. On a perusal of oral and documentary evidence, the Trial Court found the petitioner guilty and convicted the petitioner and sentenced him



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to undergo one year simple imprisonment and also awarded compensation for a sum of Rs.7,00,000/-, in default, to undergo three months simple imprisonment.

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 during the cross examination, the respondent categorically admitted that he can produce the ledger which was maintained towards their business transactions. At that juncture, the petitioner stopped his cross examination of P.W.1 and filed a petition under Section 91 of Cr.P.C. However, it was dismissed and the petitioner challenged the same before this Court in Crl.O.P.No.11595 of 2017. Pending the said petition, the Trial Court convicted the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, according to the learned counsel for the petitioner, the petitioner was not given an opportunity to cross examine P.W.1 in full. In fact, the petitioner did not even commence the defence while cross examination of P.W.1, since P.W.1 admitted that he can produce the ledger in respect of their business transactions.

5. Therefore, the petitioner rebutted the presumption arising out of Section 139 of Negotiable Instruments Act. However, the petitioner is inclined to



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settle the amount and accordingly the petitioner and the respondent agreed to compromise for the total sum of Rs.7,00,000/-. Out of Rs.7,00,000/-, the petitioner had already deposited a sum of Rs.1,75,000/- and he is ready to pay the balance amount of Rs.5,25,000/-, within a period of four weeks.

6. Considering the submission made by learned counsel for the petitioner, the Judgment passed in Crl.A.No.340 of 2017, dated 27.09.2018, on the file of the Principal Sessions Judge, Chennai, confirming the order passed in C.C.No.10986 of 2014 dated 26.10.2017, on file of the learned Metropolitan Magistrate Fast Track Court II at Allikulam, are hereby set aside, on condition that the petitioner shall pay a sum of Rs.5,25,000/-, directly to the respondent by way of Demand Draft, on or before 25.11.2022, failing which, the conviction and sentence imposed by the Courts below shall stand automatically restored. On such payment, the respondent is permitted to withdraw the amount which was already deposited by the petitioner to the credit of the Trial Court, by way of filing appropriate application. It is made clear that the Trial Court shall permit the same, without ordering notice to the petitioner.

7. Accordingly, this Criminal Revision case stands allowed.



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

- 1.The Principal Sessions Judge, Chennai.
- 2.The Metropolitan Magistrate Fast Track Court II at Allikulam
Chennai.

G.K.ILANTHIRAIYAN. J,

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