



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1186 of 2018

and

Crl.M.P.No.17024 of 2018

Mohammad Abbaz @ Abbaz

... Petitioner

Vs.

Shymala Raja

... Respondent

Prayer: Criminal Revision Petition filed under section 397 and 401 of Criminal Procedure Code, seeking to set aside the judgement passed in C.C.No.1554 of 2014 dated 22.03.2018 on the file of III, M.M.George Town, Chennai confirmed in C.A.No.195 of 2018 dated 10.09.2018 on the file of XVIII Additional Sessions Court, Chennai.

For Petitioner : Mr.T.Balaji
for M/s.T.Muruganantham

For Respondent : Mr.V.Kannadasan

ORDER

This Criminal Revision Petition has been filed to set aside the judgement passed in C.C.No.1554 of 2014 dated 22.03.2018 on the file of III, M.M.George Town, Chennai, confirmed in C.A.No.195 of 2018 dated 10.09.2018 on the file of XVIII Additional Sessions Court,



Chennai.

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2. The case of the petitioner is that the respondent lodged a complaint as against him for the offence under section 138 of Negotiable Instruments Act, alleging that the petitioner had borrowed a sum of Rs.8,00,000/- and not repaid the same. The further allegation is that the wife of the petitioner had executed a loan deed and thereby, assured to repay the said loan amount with interest. In order to settle the amount, the petitioner issued a cheque and the same was presented for collection. However, it was returned dishonoured for the reason "funds insufficient". After issuance of statutory notice, the respondent lodged a complaint. Hence, the case.

3. On the side of the respondent, she was examined as P.W.1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, he himself was examined as D.W.1 and no documents were marked. On a perusal of the oral and documentary evidences, the trial court convicted the petitioner and sentenced him to undergo simple imprisonment for a period of one year for the offence punishable under Section 138 of Negotiable Instruments Act and awarded compensation of Rs.12,96,000/- payable to the defacto complainant as contemplated under Section 357(3) Cr.P.C.

Aggrieved by the same, the petitioner preferred appeal and the Appellate



Court had dismissed the appeal, confirming the order of the trial court.

Therefore, the petitioner filed a petition for suspension of sentence imposed by the trial Court before this Court. This Court, while suspending the sentence, had directed the petitioner to deposit a sum of Rs 4,00,000/- within a period of four weeks to the credit of C.C.No.1554 of 2014 on the file of the III Metropolitan Magistrate, George Town, Chennai. However, the petitioner failed to comply with the conditions even till today.

4. The petitioner raised grounds that he never borrowed any amount from the respondent and even that the loan was borrowed by his wife and on the behalf of his wife, the petitioner issued the alleged cheque. Therefore, he admits that there was no consideration passed for the issuance of cheque and the petitioner had no liability towards the respondent to issue any cheque. In fact, the cheque was issued for the purpose of security, while the loan was availed by his wife. It is seen that the petitioner's wife approached the respondent through the respondent's husband and availed loan of Rs.8,00,000/-. On 06.05.2010, the wife of the petitioner had executed a loan deed and assured to repay the said amount with interest on or before 03.11.2012 and the said loan

<https://www.mhc.tn.gov.in> agreement dated 06.05.2010 was marked as Ex.P.7. In order to repay the



said amount, on the date of borrowal, the petitioner issued a post dated cheque. Hence, he seeks to set aside the judgement dated 22.03.2018 passed by the trial Court.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. This Court is of the considered view that on receipt of statutory notice dated 25.03.2013, the petitioner failed to reply to rebut the case of the respondent herein. Further, the petitioner ever denied the signature of the cheque and the issuance of cheque in favour of the respondent herein. Therefore, the statutory presumption under section 118, 139 of Negotiable Instruments Act is available in favour of the respondent herein and that the petitioner failed to rebut the presumption by any means. Though the petitioner made so many allegations, he did not lodge any complaint before the police. The presumption mandated under Section 139 of Negotiable Instruments Act includes that there exists legal enforcement debt or liability. Thereby, it is open to the accused to raise defence wherein the existence of a legal enforcement debt or liability can be contested. However, there can be no doubt that



However, the petitioner has failed to rebut the evidence of the respondent.

7. Therefore, this Court finds no infirmity or illegality in the orders passed by the Courts below. Hence, this Court is not inclined to set aside the judgement passed by the Court below in C.C.No.1554 of 2014 dated 22.03.2018.

8. Accordingly, this Criminal Revision case stands dismissed. Consequently, connected Miscellaneous Petition is closed.

30.09.2022

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

Copy to:

1. The III Metropolitan Magistrate, George Town, Chennai
2. The XVIII Additional Sessions Court, Chennai

G.K.ILANTHIRAIYAN, J.
Anu



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