IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

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

Crl.R.C.No.1203 of 2018

Noor Moahmmed ... Petitioner

Vs.

A.Shanawaz ... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining the judgement dated 07.09.2018 passed in C.A.No.16 of 2015 by the Additional District and Sessions Court (Mahila Fast Track Court), Thiruvarur confirming the judgement dated 24.03.2015 passed in S.T.C.No.104 of 2011 by the Fast Track Judicial Magistrate Court, Thiruthuraipoondi (Full Additional Incharge), set aside the same, allow this revision.

For Petitioner : Mr.C.D.Sugumar

For Respondent : Mr.R.Venkatajalapathy
for Mr.S.Kadarkarai.

O R D E R

This revision has been filed as against the judgment dated 07.09.2018 passed in C.A.No.16 of 2015 on the file of the Additional District and Sessions Court (Mahila Fast Track Court), Thiruvarur thereby confirming the judgment dated 24.03.2015 passed in STC.No.104 of 2011 by the learned Fast Track Judicial Magistrate, Thiruthuraipoondi (full Additional Incharge) thereby convicted the petitioner for offence punishable under Section 138 of Negotiable Instruments Act.

2. The petitioner is an accused on the complaint lodged by the respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that the petitioner had borrowed a sum of Rs.4,00,000/- from the respondent on 20.01.2011 and in order to repay the said amount the petitioner had issued a cheque dated 30.01.2011 bearing No.139415 and when the said cheque was presented for collection the same was returned for the reason “funds insufficient”. On 02.02.2011 it was informed to the petitioner and on his interest again it was presented for collection, however once again it was dishonoured for

the reason “funds insufficient” by the return memo dated 17.05.2011. After causing statutory notice the respondent lodged a complaint.

3. On the side of the respondent PW1 was examined and Exs.P1 to P12 were marked and on the side of the petitioner DW1 & DW2 were examined and ExD1 & D2 were marked.

4. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and also awarded compensation of Rs.4,00,000/-. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed and confirmed the order passed by the trial Court. Hence, this Revision.

5. The learned counsel for the petitioner submitted that the Court below failed to consider Ex.D1 and Ex.D2. Ex.D1 is the Savings Bank Account Pass Book and Ex.D2 is the letter issued by the petitioner to stop

payment on the alleged cheques. On 17.08.2010 the petitioner alleged that the cheque was misplaced along with other two cheques and hence he issued a letter to the Branch Manager of the Andhra Bank, Chennai to stop payment of those cheques which was duly received by the Bank Manager and in fact his banker deducted the stop payment charges of Rs.55/- for each cheque on 17.08.2010. In support of his contention the petitioner also examined DW2 Branch Manager of the said Bank. Therefore the petitioner duly rebutted the presumption arise out of Sections 118 and 139 of Negotiable Instruments Act and the petitioner neither borrowed any amount as alleged in the complaint and he did not had any occasion to issue the impugned cheque for any legal enforcement.

6. Per contra, the learned counsel for the respondent submitted that immediately after presentation of the cheque it was returned for the reason "funds insufficient". If at all the petitioner had sent a letter to stop payment, the endorsement must be "payment stopped" whereas in Ex.P2 Return Memo, it clearly reveals that the cheque which was marked as Ex.P1 was returned for the reason "funds insufficient". In fact on first

occasion when Ex.P1 was presented the same was also found to be returned for the reason “funds insufficient” and the same was informed to the petitioner and on his instructions when it was again presented for collection, once again it was returned for the reason “funds insufficient”. To honour the cheque by the return memo it was marked as Ex.P2 dated 17.05.2011. He further submitted that the Branch Manager of the Andhra Bank, Chennai was examined as DW2 and he categorically admitted that the alleged cheque was returned for the reason “funds insufficient”. Further the said cheque was issued in other means for a sum of Rs.5,50,000/- dated 14.08.2010, therefore the letter issued for stopping the payment is pertaining to other cheque and not related to Ex.P1. Therefore the respondent discharged his initial burden as contemplated under Section 138 of N.I.Act and the petitioner failed to rebut the same by proper evidence. Hence both the Courts below have rightly held that the petitioner is liable to be punished for the offence under Section 138 of N.I.Act.

7. Heard both sides and perused the materials available on record.

8. The case of the respondent is that the petitioner has borrowed a

sum of Rs.4,00,000/- and in order to repay the same the petitioner had issued a cheque and the same was presented for collection and returned for the reason “funds insufficient” by a return memo dated 17.05.2011 which was marked as Ex.P2. Immediately the respondent caused statutory notice which was marked as Ex.P3 though it was returned and failed to be replied by the petitioner, he examined the Branch Manager, Andhra Bank, Chennai as DW2. He also marked Ex.D1 and D2 to rebut the presumption raised by the respondent. The case of the petitioner is that the petitioner and the respondent had no acquittance with each other and there is no need for the petitioner to borrow any money from the respondent. In the cross examination, the petitioner specifically put a suggestion that the respondent had no source of income to lend such a huge amount of Rs.4,00,000/-. Further the respondent did not even mention the date of borrowal and did not even mention the date of issuance of cheque. Admittedly except PW1 impugned cheque the respondent did not file any document in support of his contention. In order to rebut the presumption, the petitioner examined himself as DW1 and examined his Branch Manager as DW2. He categorically deposed that the impugned cheque

PW1 along with two other cheques bearing Nos.139413 & 139415 were lost by him on 17.08.2010. Immediately he had sent a letter dated 17.08.2010 to his Branch Manager to stop payment on those cheques. In fact for the stop payment on those cheques his Banker also deducted Rs.55/- for each cheque on 17.08.2010 itself. He further deposed that the respondent is a stranger to him and he never borrowed any amount. In support of his contention he also examined DW2 who is none other than the Branch Manager of the Bank and he deposed that the petitioner is holding an account in his branch and the cheques bearing Nos.139413, 139414 & 139415 have been issued by his Banker. On 17.08.2010 he received a letter to stop payment of those three cheques for the reason that all three cheques were lost. On receipt of the same a sum of Rs.55/- was deducted for each cheque from his account. He further submitted that Ex.P2 return memo was not issued by his branch and it was issued by the Main Branch of cheque process centre, Andhra Bank. Further Ex.P2 does not contain any signature, whereas he cross examined and he admitted that P2 was issued for the reason that funds insufficient and it was issued by his Banker. He means to state that his Banker means his main branch, it does not mean that his branch. Further the cheque number, amount and date mentioned in the letter dated 17.08.2010 by the petitioner are not relevant to the case because the petitioner issued stop payment letter dated 17.08.2010 and the same was duly received by his bank and also deducted Rs.55/- for each cheque. Therefore, on the date of giving stop payment whether the amount was available or not is not material for reason that he issued stop payment letter on the ground that all those three cheques were lost by him, it means that he did not issue the cheque to any body for any purpose. Therefore the petitioner rebutted the presumption by preponderance of probabilities. However, the Courts below did not believe the letter of the petitioner on the ground that though the petitioner issued stop payment letter dated 17.08.2010 he failed to lodge any complaint for loss of his cheques and he did not take any steps to recover the same. The Courts below did not believe the version of the petitioner as stated supra. The petitioner while issuing stop payment letter categorically mentioned that those cheques were lost from his custody and requested to stop payment. It is not the case of the petitioner that the alleged cheque was issued to the respondent and there was no legal enforcement and as such requested to stop payment on the said cheque. If the petitioner issued stop payment letter after issuing the said cheque in favour of the respondent, then the petitioner ought to have proved that on the date of issuance of stop payment letter he had enough money to encash Ex.P1. Therefore maintaining the account with enough money to encash PW1 does not arise. Hence the petitioner byway of cross examination and also examining PW1, DW1 and DW2 categorically rebutted the presumption arising out of Section 138 of Negotiable Instruments Act. Hence, this Court finds infirmity and illegality in the orders passed by the Court below and has no hesitation to interfere with the orders passed by the Courts below.

9. In view of the above, the judgment passed by the learned Additional District and Sessions Judge (Mahila Fast Track Court), Thiruvarur in C.A.No.16 of 2015 dated 07.09.2018 thereby confirming the judgment passed in S.T.C.No.104 of 2011 dated 24.03.2015 on the file of the Fast Track Judicial Magistrate Court, Thiruthuraipoondi (Full Additional incharge), is hereby set aside.

10. Accordingly, this Criminal Revision case stands allowed. The petitioner is permitted to withdraw the amount which is already deposited by the petitioner before the trial court, by way of filing appropriate application. It is made clear that the trial Court is directed to disburse the amount in favour of the petitioner without ordering notice to the respondent.

20.10.2022

Index: Yes/No
Speaking/Non-speaking order
dpq

To
1. The Fast Track Judicial Magistrate Court,
   Thiruthuraipoondi (Full Additional Incharge).
2. The Additional District and Sessions Court
   (Mahila Fast Track Court),
   Thiruvarur.

G.K.ILANTHIRAIYAN, J.
dpq

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