



CRL.R.C.No.1309 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM

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

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S.Murugesan

... Petitioner

Vs.

1. J.Velmurugan

2. V.Savithri

Rep. by her power agent

Velmurugan

... Respondents

PRAYER: Criminal Revision case has been filed under Section 397 & 401 of Cr.P.C to set aside the judgment passed in C.A.No.110 of 2017 on the file of the learned Principal Sessions Judge, Tiruvallur, dated 01.08.2017, confirming the judgment passed in S.T.C.No.86 of 2016 on the file of the learned Judicial Magistrate, FTC (Magisterial level), Ambattur, dated 10.07.2017 and acquitted the accused.

For Petitioner : Mr.S.L.Venkatesan

For Respondents : Mr.S.Ravichandran



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ORDER

This Criminal Revision is directed as against the judgment passed in C.A.No.110 of 2017 dated 01.08.2017 on the file of the learned Principal Sessions Judge, Tiruvallur, confirming the order passed in S.T.C.No.86 of 2016 dated 10.07.2017 on the file of the learned Judicial Magistrate, Fast Track Court, Magistrate level, Ambattur, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as “the NI Act”) and sentenced him to undergo four months simple imprisonment and also awarded compensation to the tune of Rs.3,40,000/- in default to undergo further period of one month simple imprisonment.

2. The petitioner is an accused in the complaint lodged by the respondent. The crux of the complaint is that during the second week of September, 2015, the petitioner approached the respondent with a proposal to sell a land ad measuring 12 cents at Ayappakkam Village. Believing his words, the respondent paid a sum of Rs.5,00,000/- as advance to purchase the said property. However, the petitioner failed to complete the sale transaction as agreed between them. Therefore, the



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respondent demanded the petitioner to return the advance amount received by him. Hence in order to repay the said amount, the petitioner issued cheque for a sum of Rs.5,00,000/-. When the cheque was presented for collection, the same was returned dishonour for the reason that funds insufficient. Therefore, the respondent caused legal notice dated 05.11.2015 and the same was duly received by the petitioner on 06.11.2015. The petitioner neither sent a reply nor made any payment. Hence, the respondent lodged complaint as against the petitioner.

3. On the side of the respondent, he himself examined as P.W.1 and also marked documents as Ex.P.1 to Ex.P.5. On the side of the petitioner, he examined D.W.1 & D.W.2 and no document has been marked before the trial Court. On a perusal of oral and documentary evidence, the trial Court found the guilt of the petitioner for the offence punishable under Section 138 of the NI Act and sentenced him to undergo four months simple imprisonment and also awarded compensation of Rs.3,40,000/- in default to undergo further period of one month simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by confirming the judgment passed by



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the trial Court. Hence, the petitioner filed this present revision.

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4. The learned counsel appearing for the petitioner submitted that the petitioner is not the owner of the property. He received a sum of Rs.4,00,000/- from the respondent on behalf of one Rathinasabapathi to sell the property. After receipt of the amount, the said Rathinasabapathi died. Therefore, the petitioner could not able to settle the amount and also could not able to register the subject property in favour of the respondent herein. In order to rebut the presumption, the petitioner examined himself as D.W.1 and in support of his case, the petitioner also examined D.W.2., and he corroborated the evidence of D.W.1. He further submitted that the petitioner already undergone one month simple imprisonment and now he is aged about 78 years. Therefore, he prayed to set aside the conviction and sentence imposed by the Courts below.

5. Per contra, the learned counsel appearing for the respondent submitted that the respondent proved his case and discharged the initial burden under Section 138 of the NI Act. However, the petitioner failed to rebut the presumption as required under law. In fact, the petitioner



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himself categorically admitted his liability and therefore no question of rebut that there was no legally enforceable debt. Admittedly, the petitioner received the amount as advance to sell the property and the respondent did not know, who is the owner of the property. Therefore, both the Court below rightly convicted the petitioner for the offence under Section 138 of the NI Act.

6. Heard Mr.S.L.Venkatesan, learned counsel appearing for the petitioner and Mr.S.Ravichandran, learned counsel appearing for the respondents.

7. Admittedly, the petitioner received amount as advance from the respondent in order to sell the property. The petitioner examined D.W.1 & D.W.2 to rebut case of the respondent. On a perusal of evidence of D.W.1 revealed that the petitioner received a sum of Rs.4,00,000/- as advance from the respondent herein on behalf one Rathinasabapathi, who is the owner of the property. After handed over the entire amount, the said Rathinasabapathi died. Therefore, he could not able to execute any sale deed in favour of the respondent. Thereafter, on coercion and threatening,



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the petitioner issued cheque for a sum of Rs.5,00,000/-. On a perusal of deposition of D.W.2 also revealed that on behalf of Rathinasabapathi, the petitioner was being a broker, he received a sum of Rs.4,00,000/- from the respondent. However, he died as such the said amount could not be repaid in favour of the respondent herein.

8. That apart, while pending trial, the petitioner paid a sum of Rs.60,000/- to the respondent. Further the petitioner never denied his signature found in the cheque and issuance of cheque. Therefore, the trial Court rightly convicted the petitioner and sentenced him to undergo four months simple imprisonment and also awarded compensation to the tune of Rs.3,40,000/- and the same has been confirmed by the first appellate Court. The learned counsel appearing for the petitioner submitted that now the petitioner is aged about 78 years and he already undergone imprisonment for one month, as such he prayed to reduce the sentence.

10. Considering the above facts and circumstances, the conviction imposed by the Courts below are hereby confirmed. Insofar as the sentence is concerned, this Court is inclined to reduce the sentence to



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the period already undergone by the petitioner, on payment of Rs.3,40,000/- on or before 05.12.2022, in default, shall undergo one month simple imprisonment.

11. With the above directions, the Criminal Revision Petition stands partly allowed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

***Note : Issue order copy on or
before 11.11.2022***

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G.K.ILANTHIRAIYAN, J

rts

To

1. The Principal Sessions Judge,
Tiruvallur.
2. The Judicial Magistrate,
FTC (Magisterial level),
Ambattur.

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