IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

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

Crl.R.C.No.1398 of 2018

A.Thangavel ... Petitioner

Vs.

S.Selvaraj ... 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 judgment passed by the the learned I Additional District and Sessions Judge, Coimbatore in Crl.A.No.435 of 2017 dated 05.10.2018 and modifying the order in C.C.No.664 of 2013 dated 05.12.2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore and set the petitioner at the liberty.

For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.I.Abrar Md.Abdullah

ORDER

This Criminal Revision is directed as against the judgment passed in Crl.A.No.435 of 2017 dated 05.10.2018 on the file of the learned I Additional District & Sessions Judge, Coimbatore, modifying the conviction and sentence imposed in C.C.No.664 of 2013 dated 05.12.2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore, thereby convicting the petitioners for the offences under Section 138 of the Negotiable Instruments Act (herein after referred to as “the NI Act”).

2. The petitioner is an accused on the complaint lodged by the respondent. The respondent lodged complaint alleging that the petitioner borrowed a sum of Rs.3,00,000/- on 24.12.1999 and also executed a promissory note in favour of the respondent and agreed to repay the same with interest at the rate of 12@ per annum. In order to repay the said amount, the petitioner issued cheque for a sum of Rs.3,60,000/- and the same was presented for collection. It was returned dishonured with endorsement “the cheque reported lost by drawer”. After causing statutory notice, the respondent lodged the present complaint.

3. On the side of the respondent, he himself examined as P.W.1 and marked documents as Ex.P.1 to Ex.P.6. On the side of the petitioner

he examined D.W.1 & D.W.2 and also marked documents as Ex.D.1 to Ex.D.5. On a perusal of oral and documentary evidences, the trial Court found him guilty for the offence under Section 138 of the NI Act and sentenced him to undergo six months simple imprisonment and also awarded compensation to the tune of cheque amount, in default shall undergo simple imprisonment further period of two months. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by modifying the sentence from six months to three months of simple imprisonment and also reduced the compensation amount from Rs.3,60,000/- to Rs.3,00,000/-, as against which the present revision.

4. The learned counsel appearing for the petitioner submitted that the petitioner never borrowed any loan as alleged by the respondent. He never issued promissory note as alleged by the respondent. In fact, the petitioner lost his cheque as such he immediately had send a letter dated 07.11.2001, to his banker to stop payment for the reason that he lost the cheque along with other cheques. After loosing the cheques, the petitioner did not know who had stolen the cheque. Therefore, he could not lodge any complaint immediately. On presentation of cheque, it was returned

dishonored for the reason that the cheque reported lost by the drawer. Immediately it was informed to the petitioner by his banker. Therefore, on 16.09.2002, he lodged complaint which was marked as Ex.D.5. After receipt of the statutory notice, the petitioner lodged complaint before the Inspector of Police, Annur Police Station and he was also issued C.S.R.No.193 of 2002. Though the petitioner accepted the signature found in the cheque, he never issued the cheque in order to discharge any debt and also never executed any promissory note, since he was not borrowed any amount as alleged by the respondent.

4.1. He further submitted that the petitioner also examined his Bank Manager to substantiate his contention by marking the documents as Ex.D.1 and Ex.D.2. Thereafter the petitioner closed the account. In fact, the respondent approached the petitioner and being an employee of the bank and the petitioner only introduced the respondent to open account in his bank. Further the respondent did not present the cheque in the same bank and presented the cheque in another bank and the said account was opened only for the reason to present the cheque. Thereafter, there was no transaction in the said account. It shows that the respondent opened the another account only to misuse the cheque and also to initiate the proceedings under Section 138 of the NI Act as against the petitioner. Therefore, the petitioner categorized rebutted the presumption and without considering the same the Courts below mechanically convicted the petitioner. Therefore, he prayed to allow the revision.

5. Per contra, the learned counsel appearing for the respondent submitted that the respondent discharged his initial burden as required under Section 138 of the NI Act. The petitioner never denied his signature found in the cheque. However, the petitioner denied the signature found in the pronote and he did not take any steps to get experts opinion to prove that his signature was forged by the respondent. Though the petitioner lost the cheque in the year 2001, the petitioner did not prefer any complaint. Only in the year 2002, the petitioner lodged the complaint that too after receipt of the legal notice. There was absolutely no explanation for the delay in lodgement complaint. Therefore, the presumption is in favour of the respondent though it is rebutable in nature, the petitioner failed to rebut the same by proper evidence. Therefore, he prayed to dismiss the present revision.

6. Heard Mr.V.Vijayashankar, learned counsel appearing for the petitioner and Mr.I.Abrar Md. Abdullah, learned counsel appearing for the respondent.

7. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the NI Act. According to the respondent, the petitioner borrowed a sum of Rs.3,00,000/- on 24.12.1999 and on the same day he executed promissory note. In order to discharge his liability, the petitioner issued cheque for a sum of Rs.3,60,000/- dated 10.06.2002 and the same was returned dishonored for the reason that the cheque reported lost by drawer.

8. It is seen that the petitioner issued letter to his banker on 07.11.2001 which was marked as Ex.D.1., in which he categorically stated in that during his wife traveling in the city town bus which was crowded, she lost her hand bag which contains her personal belongings and also signed black cheque leaves bearing Nos.417075, 422996, 422997, drawn at State Band of India, Ganesapuram Branch, Coimbatore

District. Thus the petitioner reported that those cheques were lost and the same was duly received by his banker.

9. Further, immediately after presentation of cheque, it was returned for the reason that the cheque reported lost by the drawer and the same was also informed to the petitioner. It is also seen that immediately on 09.09.2002, the petitioner lodged police complaint, and the same was marked as Ex.D.5. That apart, on receipt of return memo the respondent caused statutory notice on 13.09.2002, which was marked as Ex.P.4 and the same was received by the petitioner on 16.09.2002. Immediately, the petitioner lodged complaint before the Inspector of Police, Annur Police Station, Coimbatore District. On receipt of the said complaint, the petitioner was issued C.S.R.No.193 of 2002, which was marked as Ex.D.2.

10. The petitioner also examined his Bank Manager as D.W.1 and he himself examined as D.W.2. The petitioner categorically deposed that the respondent was introduced through his brother-in-law to open an account in the bank, since the petitioner was also one of the employee in

the State of India, Ganesapuram Branch, Coimbatore District. The petitioner introduced the respondent and opened the account. However, the respondent did not present the cheque in the bank in which the petitioner also hold the account, whereas he presented the cheque in the Syndicate Bank, R.S.Puram, Coimbatore.

11. It is also seen from the cross examination of P.W.1 that the respondent opened the Syndicate back account only for the presentation of the alleged cheque. Except the presentation of cheque, there was no other transaction by the respondent in the said account. It shows that it was opened only for the purpose of presentation of cheque that too without the knowledge of the petitioner herein. On receipt of the statutory notice dated 13.09.2002 which was marked as Ex.P.4, the petitioner issued reply notice dated 21.09.2002, which was marked as Ex.P.6. In the reply notice, the petitioner categorically denied the issuance of alleged cheque and alleged pronote in favour of the respondent and it was not issued for any legally enforceable debts and it was lost as such it was returned for the reason that the cheque reported lost by the drawer. Therefore, the respondent failed to discharge the initial burden as

required under Section 138 of the NI Act.

12. Even assuming that the respondent discharged his initial burden as required under Section 138 of the NI Act, the petitioner rebutted the presumption by substantive material. Ex.D.1 and Ex.D.2 are self-explanatory and Ex.D.5 is the complaint lodged on 09.09.2002. All those documents revealed that the cheque was not issued any legally enforceable debts, though the signature was accepted by the petitioner. Therefore, the petitioner rebutted the presumption under Section 138 of the NI Act.

13. On a perusal of promissory note which was marked as Ex.P.1, the signature found in the promissory note and the cheque are completely differed. In fact, the signature found in the alleged cheque is clearly matched with the signature found in the vakalath filed along with the present revision. Whereas, the signature found in the promissory note did not match with any of the signature of the petitioner. Without considering the above facts and circumstances, the Courts below mechanically convicted the petitioner and it is liable to be set aside.

14. Accordingly, the conviction and sentence imposed on the petitioners by the judgment passed in Crl.A.No.435 of 2017 dated 05.10.2018 on the file of the learned I Additional District & Sessions Judge, Coimbatore, modifying the conviction and sentence imposed in C.C.No.664 of 2013 dated 05.12.2017 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore, are hereby set aside and the petitioner/accused acquitted of all charges. Fine amount, if any, paid shall be refunded to the petitioner forthwith. Bail bonds, if any, executed shall stand cancelled.

15. Accordingly, the Criminal Revision Petition stands allowed.

14.11.2022

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

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To

1. The I Additional District and Sessions Judge, Coimbatore

2. The Judicial Magistrate, Fast Track Court No.I, Coimbatore

G.K.ILANTHIRAIYAN, J

rts

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