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Crl.RC.Nos.1355 & 1358 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

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

Crl.RC.Nos.1355 & 1358 of 2018

Crl.RC.No.1355 of 2018

R.Varatharajan

... Petitioner

Versus

T.Amudha

... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the conviction and judgment in CA.No.1 of 2014 on the file of the learned Additional District and Sessions Judge, Hosur dated 06.10.2018 confirming the conviction and judgment in STC.No.119 of 2012 of the learned Judicial Magistrate, Fast Track Court, Hosur, passed on 03.12.2013, convicting him to undergo six months simple imprisonment and to pay compensation for Rs.60,000/- to the complainant under Section 138 r/w 142 of Negotiable Instruments Act.



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Crl.RC.Nos.1355 & 1358 of 2018

For Petitioner : M/s.L.Aishwarya Lakshmi
for Mr.K.Thiruvengadam

For Respondent : Mr.C.S.Kiran
for Mr.K.Krishnamoorthy

Crl.RC.No.1358 of 2018

R.Varadharajan ... Petitioner

Versus

T.Amudha ... Respondent

PRAYER: Criminal Revision has been filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the conviction and judgment in CA.No.2 of 2014 on the file of the learned Additional District and Sessions Judge, Hosur dated 06.10.2018 confirming the conviction and judgment in STC.No.120 of 2012 of the learned Judicial Magistrate, Fast Track Court, Hosur, passed on 03.12.2013, convicting him to undergo six months simple imprisonment and to pay compensation for Rs.50,000/- to the complainant under Section 138 r/w 142 of Negotiable Instruments Act.

For Petitioner : M/s.L.Aishwarya Lakshmi
for Mr.K.Thiruvengadam



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Crl.RC.Nos.1355 & 1358 of 2018

For Respondent : Mr.C.S.Kiran
for Mr.K.Krishnamoorthy

COMMON ORDER

The criminal revisions are directed as against the conviction and judgment in CA.Nos.1 & 2 of 2014 on the file of the learned Additional District and Sessions Judge, Hosur dated 06.10.2018 confirming the conviction and judgment in STC.Nos.119 & 120 of 2012 of the learned Judicial Magistrate, Fast Track Court, Hosur, passed on 03.12.2013, convicting him to undergo six months simple imprisonment and to pay compensation for Rs.60,000/- and Rs.50,000/- respectively to the complainant under Section 138 r/w 142 of Negotiable Instruments Act.

2. The petitioner is the accused in the complaints lodged by the respondent. According to the respondent, the petitioner borrowed a sum of Rs.1,10,000/- on 15.01.2012. In order to discharge the said liability, the petitioner issued four cheques. They were presented for collection and all the cheques were returned dishonoured for the reason 'insufficient funds'. Immediately the respondent caused legal notice and lodged complaints.

3. On the side of the respondent, in STC.No.119 of 2012,



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examined PW1 and PW2 and marked Ex.P1 to Ex.P7. On the side of the petitioner, examined DW1 and DW2 and no documents were marked. On the side of the respondent, in STC.No.120 of 2012, examined PW1 and PW2 and marked Ex.P1 to Ex.P5. On the side of the petitioner, examined DW1 and DW2 and no documents were marked. On perusal of oral and documentary evidence, the trial court found the petitioner guilty for the offence under Section 138 of NI Act and sentenced him to undergo six months imprisonment and also awarded compensation in each complaint. Aggrieved by the same, the petitioner preferred appeals and the same were also dismissed and confirmed the orders passed by the trial court.

4. Though the learned counsel for the petitioner submitted that already entire bundle and change of vakalat were given to the petitioner, even till today, no counsel has been engaged by the petitioner. Therefore, this Court decided to pass orders on merits since it is a concurrent finding of the courts below.

5. The petitioner raised ground that there is no evidence on record



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to show that the respondent had lent loan to the petitioner. There was no transaction with the respondent since the petitioner had no acquittance with the respondent. In fact, the petitioner had no liability and no need to borrow any loan from the respondent. Even according to the respondent, the petitioner borrowed only a sum of Rs.1,10,000/-, whereas in the legal notice, the respondent mentioned as Rs.5,00,000/-. The respondent also failed to produce any income tax returns to prove the source of income. The respondent also failed to examine any witness and to produce any iota of evidence to show that on the date of drawal of cheque, there was legally enforceable subsisting debt. However, the courts below mechanically convicted the petitioner for the offence under Section 138 of NI Act.

6. Heard, the learned counsel for the respondent.

7. On perusal of the records, revealed that the petitioner borrowed a sum of Rs.1,10,000/- on 15.01.2012. In order to repay the same, the petitioner issued four cheques for a sum of Rs.50,000/-, Rs.10,000/-, Rs.30,000/- and Rs.20,000/-. The respondent presented the cheques and the



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same were returned dishonoured with endorsement 'funds insufficient'.

Immediately, the respondent caused legal notice. The said notice was returned as 'unclaimed'. No reply notice was sent by the petitioner herein to rebut the case of the respondent. Under section 118 of NI Act, for presumption as to the negotiable instruments, until the contrary is proved, the following presumption shall be made: a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, endorsed, negotiated or transferred for consideration

8. Further, under Section 139 of NI Act, presumption is in favour of the holder and it shall be presumed unless the contrary is proved that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. However, this presumption is rebuttable in nature, whereas the petitioner failed to rebut the same. Though the petitioner examined DW1 and DW2, their evidence was not sustained by any documentary evidence. The petitioner failed to send any reply notice to the legal notice caused by the



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respondent.

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9. On perusal of the deposition of DW1 and DW2 found that the petitioner failed to raise any probable defence and failed to prove that the petitioner had discharged the debt received from the respondent. Further, when this Court suspended the sentence for the petitioner, imposed condition that he shall deposit a sum of Rs.60,000/- and Rs.50,000/- respectively to the credit of the trial court. It is also not complied with by the petitioner so far. Therefore, this Court finds no illegality or infirmity in the orders passed by the courts below.

10. Accordingly, both the criminal revisions are dismissed.

13.10.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,



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To

- 1.The learned Additional District and Sessions Judge,
Hosur
- 2.The learned Judicial Magistrate,
Fast Track Court, Hosur,

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13.10.2022