IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

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

Crl.R.C.No.1396 of 2018
Crl.M.P.Nos.16232 & 16233 of 2018

Sivanantham ... Petitioner

Vs.

T.R.Narayanan ... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C to set aside the conviction imposed in the judgment dated 23.08.2018 made in C.A.No.231 of 2015 on the file of the learned I Additional District and Sessions Judge, Coimbatore, modifying the judgment dated 09.10.2015 made in C.C.No.12 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level-II, Coimbatore by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.Sudhakar

ORDER

This Criminal Revision is arising out of the judgement dated 23.08.2016, passed in C.A.No.231 of 2015, on the file of the learned I

Additional District and Sessions Judge, Coimbatore, thereby modifying the judgment dated 09.10.2015 passed in C.C.No.12 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level-II, Coimbatore, thereby convicting the petitioner for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as "the NI Act").

2. The petitioner is an accused and the respondent is the complainant. The respondent lodged complaint as against the petitioner and the crux of the complaint is that first weeks of December, 2011, the petitioner approached him for a hand loan of Rs.8,50,000/- for his family and business commitments. In order to repay the said amount, the petitioner issued a cheque for a sum of Rs.8,50,000/- and it was presented for collection and the same was returned dishonored for the reason that insufficient funds. After causing statutory notice to the petitioner, the respondent lodged the complaint.

3. On the side of the respondent, he examined P.W.1 & P.W.2 and marked documents as Ex.P.1 to Ex.P7. The petitioner did not examine

any witness and not marked any document. On a perusal of oral and documentary evidence, the trial Court found the guilt of the petitioner and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5000/- in default to undergo two months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed by confirming the order passed by the trial Court.

4. Aggrieved by the same, the petitioner already filed revision before this Court in Crl.RC.No.1456 of 2016 and this Court by an order dated 15.02.2017 allowed the revision and remanded back the matter to the first appellate Court for fresh consideration and also permitted the petitioner to let in additional evidence toward marking bank statement of the petitioner under Section 391 of Cr.P.C. The first appellate Court after examining D.W.1, again confirmed the convicting and reduced the sentence from one year to six months, as against which the present revision case.

5. The learned counsel appearing for the petitioner submitted

that the cheque was of the year 2009 and it was issued on 23.09.2009 and it was not issued for any legally enforceable debt. The petitioner examined the bank Manager as D.W.1, before the first appellate Court and he deposed that the alleged cheque which was marked as Ex.P1 was issued in the year 2009, as such it shows that the alleged cheque was issued for security purpose. The petitioner borrowed very megar amount and the respondent received the alleged cheque for security purposed. Thereafter it was misused by him and presented for collection.

5.1. He further submitted that after receipt of statutory notice, the petitioner caused reply notice, which was marked as Ex.P.5 in which, he categorically stated that, he borrowed a sum of Rs.1,50,000/- on 20.12.2009 and at the time of borrowal of the said amount, he issued the alleged cheque, which was duly signed by him, as security purpose. After repayment of entire loan amount on various dates, the respondent failed to return the document, which was received as security purpose. Therefore, the petitioner categorically rebutted the presumption arising out of Section 138 of the NI Act.

5.2. He further submitted that the respondent had no source of income to lend such a huge amount of Rs.8,50,000/- as loan to the petitioner herein. The petitioner also cross-examined P.W.1. However, the Courts below without considering these facts and circumstances mechanically convicted the petitioner. Therefore, he prayed to allow this revision.

6. Heard Mr.K.Sudhakar, learned counsel appearing for the petitioner and perused the documents.

7. It is seen from the records after conviction by the Courts below, the sentence imposed on the petitioner did not get suspended till today. The Criminal Revision is pending for the past four years and unfortunately, the respondent did not take any step as against the petitioner and the petitioner also failed to surrender before the Court below.

8. On merits, it is seen that the respondent examined P.W.1 & P.W.2 and also marked Ex.P.1 to Ex.P.7. On the side of the petitioner, he

examined D.W.1 before the first appellate Court. Though the petitioner had taken specific stand that the cheque which was marked as Ex.P.1 was issued for security purpose, he failed to prove the same by any substantial evidence. Mere cross examination of P.W.1 would not serve any purpose to rebut the presumption arising out of Section 138 of the NI Act. Further, the petitioner did not deny the issuance of cheque and did not dispute the signature found in the cheque. Therefore, the initial burden on the shoulder of the petitioner is clearly proved, and he failed to rebut the presumption under Section 138 of the NI Act. Though it is rebuttable in nature, the petitioner failed to rebut the same as contemplated under Section 138 of the NI Act.

9. It is also seen from Ex.P.5, the reply notice sent by the petitioner that he categorically stated that he borrowed a sum of Rs.1,50,000/- from the respondent on 20.12.2009 and handed over the cheque for security purpose. After repayment of entire amount, the respondent failed to return the said cheque which was executed at the time of borrowal. Even assuming that the petitioner repaid the entire amount

and the respondent refused to return the same, the petitioner did not lodge any police complaint and failed to take any steps to get back the document which was executed for security purpose.

10. Further, as directed by this Court, the petitioner examined D.W.1 and through him he marked the statement of account. Though Ex.P.1 was issued in the year 2009 to the petitioner by his banker, it doesn't mean that it was issued to the respondent in the year 2009. Further, the learned counsel appearing for the petitioner contended that the respondent had no source of income to lend such a huge amount of Rs.8,50,000/-.

11. On a perusal of the statement recorded under Section 131 of Cr.P.C., the petitioner never denied the issuance of cheque and never stated that the respondent had no source of income to lend such huge amount. Mere cross examination would not serve any purpose to rebut the presumption under Section 138 of the NI Act. Therefore, the Courts below rightly convicted the petitioner and this Court finds no infirmity or

illegality in the impugned order. However, if any settlement arrived between the parties, the petitioner is at liberty to approach this Court by way of proper petition.

12. Accordingly, the Criminal Revision stands dismissed. The judgments of conviction and sentence passed by the Courts below are hereby confirmed. The trial Court is directed to take steps to secure the petitioner for the purpose of sentencing him to undergo the conviction. It is also directed that the period of sentence already undergone by the petitioner, if any, shall be given set off, as required under Section 428 Cr.P.C. Consequently, connected miscellaneous petitions are closed.

17.10.2022

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,
   Magisterial Level-II,
   Coimbatore .

G.K.ILANTHIRAIYAN, J

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