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Crl.RC.No.1467 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

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

Crl.RC.No.1467 of 2018

Rajendra Singh

...

Petitioner

Versus

1.State Rep. by
Public Prosecutor,
Coimbatore City, Coimbatore

2.Sunil L Samtani

...

Respondents

PRAYER: Criminal Revision has been filed under Section 397 & 401 of the Code of Criminal Procedure to call for the records pertaining the judgment dated 24.09.2018 passed in CA.No.207 of 2017 by the learned I Additional District and Sessions Court, Coimbatore confirming the judgment dated 01.07.2017 passed in CC.No.277 of 2014 by the Fast Track Court Judicial Magistrate No.II, Coimbatore and to set aside the same and allow this revision.

For Petitioner : Mr.U.Manogar
for Mr.C.D.Sugumar



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For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)
For R2 : No appearance

ORDER

This criminal revision has been filed against the judgment dated 24.09.2018 passed in CA.No.207 of 2017 by the learned I Additional District and Sessions Court, Coimbatore modifying the judgment dated 01.07.2017 passed in CC.No.277 of 2014 by the Fast Track Court Judicial Magistrate No.II, Coimbatore, thereby convicted the petitioner for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The respondent lodged complaint alleging that the petitioner borrowed a sum of Rs.3,00,000/- on 24.10.2012 on execution of promissory note to the said amount. In order to repay the said amount, the petitioner issued cheque for a sum of Rs.3,50,000/-. The said cheque was presented for collection and the same was returned dishonoured for the reason “funds insufficient”. After



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causing statutory notice, the respondent preferred complaint. On the receipt of the same, the trial court had taken cognizance and examined the respondent as PW1 and marked Ex.P1 to Ex.P5. On the side of the petitioner, he examined DW1 and DW2 and marked Ex.D1.

3. On perusal of oral and documentary evidence, the trial court found him guilty for the offence punishable under Section 138 of NI Act and sentenced to undergo one year simple imprisonment and also to pay the cheque amount as compensation to the respondent. Aggrieved by the same, the petitioner filed appeal and the appellate court modified the sentence, thereby reduced to six months from one year and also modified the compensation as Rs.3,00,000/- instead of Rs.3,50,000/-. Aggrieved by the same, this criminal revision has been filed.

4. The learned counsel for the petitioner would submit that he was examined as DW1. He categorically deposed before the trial court that the alleged cheque was not issued by him for any legally enforceable debt. It was issued for the purpose of security, that too while borrowing loan from



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one Sundar and Magesh. In fact, the cheques were obtained from his brother and wife. Instead of presenting the said cheques, directly the alleged cheque was misused by the respondent and presented for collection. Though the petitioner accepted the signature in the cheque, it was filled up by the respondent and presented for collection. Without considering the above facts and circumstances of the case, the courts below unfortunately convicted the petitioner herein.

5. Heard, the learned counsel for the petitioner and the learned Government Advocate(crl.side) appearing for the first respondent.

6. On perusal of records, revealed that the petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act. The respondent marked pronote as Ex.P1 issued in favour of the respondent. On the date of borrowal i.e. 24.10.2012, the petitioner executed pronote in favour of the respondent. In order to repay the loan amount with interest, the petitioner issued cheque which was marked as Ex.P2. Even assuming that the cheque was issued as security purpose, the



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petitioner did not even whisper about Ex.P1, which was executed by him at the time of borrowal of loan. In fact, the petitioner duly received the statutory notice caused by the respondent, which was marked as Ex.P5. Even after receipt of statutory notice, the petitioner failed to send any reply notice to rebut the presumption arising out of Section 138 of NI Act. Only in the cross examination of PW1, the petitioner had taken stand that the alleged cheque was issued as security in favour of one, Sundar and Magesh. Though the other complaints lodged by them got acquitted, the respondent lodged complaint as against the petitioner and his brother, which is pending. That apart while ordering suspension of sentence, this Court directed the petitioner to deposit 50% of the cheque amount. However, it is also not complied with by the petitioner.

7. In view of the above, this Court finds no infirmity or illegality in the judgment passed by the first appellate court. Accordingly, this criminal revision is dismissed and the judgment dated 24.09.2018 passed in CA.No.207 of 2017 by the learned I Additional District and Sessions Court, Coimbatore is confirmed. The trial Court is directed to take steps to secure



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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.

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

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To

- 1.The I Additional District and Sessions Court,
Coimbatore
- 2.The Fast Track Court Judicial Magistrate No.II,
Coimbatore
- 3.The Public Prosecutor,
High Court of Madras

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