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Crl.R.C.No.1506 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

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

CRL.R.C.No.1506 of 2018

Nandagopal

... Petitioner

Vs.

V.Srinivasan

... Respondent

Prayer: The Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure to call for the records in C.A.No.147 of 2017 on the file of the XVII Additional Judge, City Civil Court, Chennai and set aside the judgment dated 09.10.2018 passed thereon confirming the conviction and sentence dated 31.05.2017 in C.C.No.1659 of 2013 by the Fast Track Court I, Egmore, Allikulam Complex, Chennai, convicting the petitioner herein for an offence under Section 138 of the Negotiable Instruments Act and sentencing him to six months simple imprisonment and to pay a compensation of Rs.3,50,000/- under Section 357 (3) Cr.P.C., and in default to undergo simple imprisonment for a period of two months and praying to set aside the said order and acquit the petitioner from the said charge.

For Petitioner : No appearance

For Respondent : No appearance



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ORDER

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This petition has been filed to set aside the judgment dated 09.10.2018 passed in C.A.No.147 of 2017 on the file of the XVII Additional Judge, City Civil Court, Chennai, confirming the conviction and sentence dated 31.05.2017 in C.C.No.1659 of 2013 by the Fast Track Court I, Egmore, Allikulam Complex, Chennai.

2. The Criminal Revision has been filed against the judgment passed in C.A.No.147 of 2017 on the file of the XVII Additional Judge, City Civil Court, Chennai, thereby confirmed the conviction condition imposed in C.C.No.1659 of 2013 dated 31.05.2017 on the file of the Fast Track Court-I, Egmore, Allikulam Complex, Chennai, for the offence under section 138 of Negotiable Instrument Act.

3. The learned counsel for the petitioner would submit that already he had filed change of vakalat for the petitioner and returned the entire bundle. Even then the petitioner has failed to engage a new counsel to represent on his behalf. Even today, no one is present on behalf of the petitioner in person or by his counsel. Further, when this Court, while suspending the sentence imposed by the Court below, imposed a condition that the petitioner shall deposit 50%



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of the cheque amount to the credit of C.C.No.1659 of 2013 on the file of the Metropolitan Magistrate, Fast Track Court No.I, Egmore, Allikulam, Chennai.

Even till today the said condition has not been complied by the petitioner. It shows that the petitioner was not interested to proceed with this case. However, this Court, passed orders on merits having gone through the entire bundle.

4. The case of the respondent is that the petitioner has borrowed a sum of Rs.3,50,000/- to meet out his son's marriage expenses in the month of July 2012 and in order to repay the said amount, he issued a cheque when the same was presented for collection, it was returned dishonoured for the reason that "funds insufficient". After causing legal notice to the petitioner and lodged a complaint.

5. On the side of the petitioner no one was examined and no document was marked and on the side of the respondent PW1 was examined and Exs.P1 to P4 were marked.

6. On perusal of the oral and documentary evidence, the trial Court found that the petitioner guilty and convicted him for the offence under



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Section 138 of NI Act, and sentenced him to undergo six months simple imprisonment and also awarded a compensation of entire cheque amount.

Aggrieved by the same, the petitioner preferred an appeal and the same was dismissed thereby confirmed the sentence imposed by the trial Court. Further, the petitioner raised grounds that the respondent received a signed black cheque and it was misused by the respondent without any legal enforcement. The alleged cheque was handed over by the petitioner during the year 2006 and the same was filled up by the respondent with an evil intention.

7. The said amount was not reflected as if the petitioner borrowed loan from the respondent. Except the cheque, the respondent did not produce any document to show that the petitioner borrowed loan. Therefore, he intentionally proved his liability which has not been discharged by the respondent and as such, the rebuttal of presumption would not arise.

8. On perusal of the records revealed that the petitioner never denied the issuance of cheque and also his signature found in the cheque. Therefore, no explanation by the petitioner is supported by any proof, the mandatory presumption created by the provision cannot be said to be rebutted. The mode of proof by the theory of Preponderance of Probabilities depends on the defence taken by the petitioner.



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9. Admittedly, after receipt of the legal notice, the petitioner failed to rebut the case of the respondent herein. That apart, he did not even examine any witness and failed to mark any document to rebut the case of the respondent herein. Further, the presumption maintained under Section 139 of NI Act includes the presumption that there exists a legally enforceable debt or liability. Therefore, the Court below rightly convicted the petitioner for the offence under Section 138 of NI Act. Hence, this Court finds not infirmity or illegality in the judgment passed by the Court below and this petition is liable to be dismissed.

10. Accordingly, the criminal revision petition stands dismissed.

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Index : Yes / No
Speaking / Non Speaking order
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- 1.The XVII Additional Judge,
City Civil Court,
Chennai.
- 2.The Fast Track Court I,
Egmore, Allikulam,
Chennai.



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G.K.ILANTHIRAIYAN, J.
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