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Crl.R.C.No.60 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.60 of 2020

R.Sampath Kumar

.. Petitioner

Vs.

P.Raja

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the conviction imposed in the judgment dated 24.10.2019 made in C.A.No.37 of 2017 on the file of the learned Additional District and Sessions Judge, Dharmapuri, confirming the conviction imposed in judgment dated 07.11.2017 made in S.T.C.No.245 of 2013 on the file of the learned Judicial Magistrate at Harur by allowing this Criminal Revision Case.

For Petitioner : Mr.J.Pradeep

For Respondent : Mr.D.Dasarathan

ORDER

This Criminal Revision Case is filed by the accused being aggrieved by the concurrent findings of the Courts below holding him



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guilty for offence under Section 138 of Negotiable Instruments Act.

2. According to the complainant, Raja / the respondent herein has borrowed a sum of Rs.7,00,000/- from the complainant as a loan and promised to repay the same in three installments. To discharge the liability, he gave post dated cheque bearing No.114022 dated 24.01.2013 drawn on HDFC bank, Salem branch for Rs.7,00,000/-. When the cheque was presented for collection, it was returned with a memo dated 29.01.2013 for “Insufficient Fund”. After causing statutory notice to the accused, which was served on him on 05.03.2013, the complainant filed a private complaint before the learned Judicial Magistrate at Harur and taken on file in S.T.C.No.245 of 2013.

3. To prove the complaint, two witnesses have been examined and 6 exhibits were marked. On the side of the accused, the accused has not adduced any oral evidence. During cross examination of the prosecution witnesses for the complainant, it was suggested that the cheque was not issued to discharge any debt incurred by the accused, but



it was given as a security in the course of chit transaction between the accused and the complainant. Except the signature in the cheque, other particulars were filled up by the complainant to suit his convenience.

4. The Trial Court on appreciation of evidence has observed that to prove the complaint, the cheque [Ex.P1] return memo [Ex.P2], statutory notice [Ex.P4] and postal acknowledgment [Ex.P5] *prima facie* established that the accused has issued a cheque for Rs.7,00,000/- and the said cheque was returned for Insufficient of funds and when this was brought to the notice of the accused, he neither replied nor repaid the cheque amount. Whereas, considering the defence put forth by the accused, the Trial Court has formulated three questions, (i) to succeed, the accused has to prove that he had conducted a chit (ii) the complainant participated in the chit (iii) for the security purpose the accused entrusted the cheque to the complainant. Having taken a specific defence, the accused has not adduced any evidence to substantiate his defence, which requires proof of three ingredients mentioned above.



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5. The Trial Court has also taken note of suggestion put to the complainant during cross examination, wherein, he has admitted regarding the participation of the chit conducted by the accused and withdrawal of amount in two cheques, out of three cheques which he has participated. However, he denied the receipt of subject cheque as a security. No contra evidence has been let in by the accused to prove that the cheque was handed over to the complainant only for the security purpose. Hence the Trial Court has rightly convicted the accused under Section 138 of N.I.Act and regarding the failure of the accused to rebut the presumption when this was challenged before the Additional District and Sessions Judge, Dharmapuri in C.A.No.37 of 2017, the Lower Appellate Court after perusal of the records has found that the conclusion of the Trial Court needs no interference, since the signature found in the cheque Ex.P1 being admitted by the accused and no contra evidence to the presumption that the cheque was issued to discharge enforceable liability.



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6. In the revision, the learned counsel for the accused contended that there is an error in the complaint regarding the branch of the accused banker the different ink used one for signature and other to enter the address in the cheque created a strong suspicion that the cheque was not issued to the complainant and for the amount mentioned that there is correction in the cheque marked as Ex.P1. Alteration in the Negotiable Instruments will render the instrument defect and unenforceable. Therefore, the Courts below ought not have believed the case of the complainant.

7. This Court, regarding the contention that the cheque has been altered, perused the cheque which is marked as Ex.P1, finds that there is no material alteration in the cheque. No doubt the ink used by the drawer to sign the cheque and the ink used to fill the address differs that will not render the cheque defective.

8. As far as the defence is concerned it is admitted that the cheque was issued in connection with the chit transaction. Except the



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suggestion to the complainant during the cross examination, there is no substantial material to draw that the subject cheque was issued as a security in connection with the chit transaction. Therefore, this Court finds that no substance in the revision to interfere with the concurrent finding of the Courts below, which has appreciated the evidence in the light of the judgments of the Court and consonance with the law. Hence the Criminal Revision Case is dismissed.

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Internet : Yes/No

Index: Yes/No

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To

- 1.The Additional District and Sessions Judge, Dharmapuri
2. The Judicial Magistrate at Harur .



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Dr.G.JAYACHANDRAN, J.

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