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Crl.R.C.No.236 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.236 of 2022 and
Crl.M.P.No.2414 of 2022

A.Kumar

... Petitioner

Vs.

M.Xavier Chandrakumar

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment in C.A.No.3 of 2020 on the file of the Principal District and sessions Judge, Kancheepuram District at Chengalpattu dated 04.12.2021, confirming the Judgment passed in C.C.No.135 of 2017 on the file of the Judicial Magistrate No.1, Chengalpattu.

For Petitioner : Mr.S.Arokiamaniraj

For Respondent : Mr.S.Rajeswaran

ORDER

Challenging the Judgment and order, dated 04.12.2021 passed in Crl.A.No.3 of 2020 by the learned Principal District and Sessions Judge, Kancheepuram at Chengalpattu, the present Criminal Revision is filed by the petitioner.



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2. The respondent/complainant filed a private complaint against the present revision petitioner under Section 200 Cr.P.C., in C.C.No.135/2017 before the learned Judicial Magistrate I, Chengalpattu for an offence punishable under Section 138 of the Negotiable Instruments Act.

3. The case of the complainant in a nutshell is as follows:

The respondent / complainant and the petitioner /accused are friends. The accused borrowed a sum of Rs.8 lakhs from the complainant and executed two promissory notes for Rs.5 lakhs and Rs.3lakhs. Subsequently, the accused issued two cheques for a sum of Rs.5 lakhs and Rs.3 lakhs dated 15.12.2016 and 02.12.2016 respectively (Ex.P1 and Ex.P2) drawn on Indian Overseas Bank, Koduveli Ramapuram Branch to the complainant towards liquidation of the loan amount. When the cheques were presented for collection by the complainant through his banker viz., Karur Vysya Bank, Kelambakkam Branch, the cheques were returned for the reason 'Insufficient funds' (Return Memo-Ex.P3). Thereafter, the complainant issued a legal notice



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dated 09.03.2017 (Ex.P4) to the accused and though the accused received the said notice as is seen from the postal acknowledgment card (Ex.P5), he neither paid any amount due under the cheques nor sent any reply to the legal notice. Therefore the complainant filed the private complaint in C.C.No.135/2017 on the file of the learned Judicial Magistrate I, Chengalpattu. The learned Judicial Magistrate took cognizance of the offence, issued summons to the revision petitioner / accused under Section 204 of Cr.P.C. On appearance of the accused, copies of records were furnished to him under Section 207 of Cr.P.C., When the accused was questioned with regard to the substance of accusation levelled against him, he pleaded not guilty and the case was posted for trial.

4. In the trial Court, the respondent / complainant examined himself as P.W1 and marked Ex.P1 to Ex.P5. When the accused was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 (i) (b) Cr.P.C, he denied of having committed any offence. The accused did not adduce any oral or documentary evidence on his side.



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5. After analysing the evidence on record, the learned Judicial Magistrate I, Chengalpattu found the revision petitioner/accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.8,00,000/- in default to undergo Simple Imprisonment for three months.

6. Aggrieved over the same, the revision petitioner/accused filed an appeal in Crl.A.No.3 of 2020 before the Principal District and Sessions Judge, Kancheepuram at Chengalpattu. The learned Principal District and Sessions Judge, Kancheepuram at Chengalpattu dismissed the appeal, confirming the conviction and sentence passed by the trial court vide his Judgment dated 04.12.2021, aggrieved over which the present revision is filed.

7. Mr.S.Arokiamaniraj, learned counsel for the petitioner contended that the complainant had not proved his wherewithal for



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lending a sum of Rs.8 lakhs to the accused and that there is no proof for the financial transaction between the complainant and the accused. He also contended that the cheques were issued in favour of a Trust in which the complainant is a Managing Trustee and that the private complaint under Section 200 of Cr.P.C., is filed by the complainant in his individual capacity and therefore the conviction and sentence passed by both the Courts has to be set aside.

8. Per contra, Mr.S.Rajeswaran, learned counsel appearing for the respondent contended that both the Courts have concurrently held that the accused had borrowed a sum of Rs.8 lakhs and issued cheques without having sufficient funds in his bank account. His further contention is that both the Courts rightly found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and therefore, there is no need to interfere with the concurrent findings of facts by the Courts below. Moreover, though the accused was given opportunity to cross examine the complainant (P.W.1.) he did not choose to cross examine him. Therefore, now the accused cannot contend that



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the complainant had no wherewithal to lend a sum of Rs.8 lakhs to him and that the cheques were issued only in favour of the Trust in which the complainant is a Managing Trustee.

9. A perusal of the cheques shows that the cheques were issued only in favour of the complainant and not in favour of the Trust. Moreover, the revision petitioner/ accused did not deny his signature on the cheques (Ex.P1 and Ex.P2). The complainant had originally obtained two promissory notes from the accused and this has not been denied. Moreover, the accused did not state that the cheques were issued only in favour of the Trust and not in favour of the complainant during questioning under Section 313 of Cr.P.C., As already observed, the accused did not cross examine the complainant and in fact did not send any reply to the notice issued by the complainant. Therefore both the Courts below had rightly held that the accused is guilty of the offence punishable under Section 138 of the Negotiable Instruments Act. This Court, while exercising revisional jurisdiction, cannot sit as a second appellate Court to reconsider the facts of the case. I do not see any reason



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to interfere with concurrent findings of facts by the Courts below. The Criminal Revision is dismissed and the conviction and sentence passed by both the courts below are confirmed. The accused is directed to surrender before the trial Court within 15 days from the date of receipt of a copy of this order, failing which the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence. Consequently, connected miscellaneous petition is closed.

17.08.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

- 1.The Principal District and Sessions Judge,
Kancheepuram at Chengalpattu.
- 2.The Judicial Magistrate I,
Chengalpattu.



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vum

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