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Crl.R.C.No.80 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2023

CORAM :

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

Crl.R.C.No.80 of 2020
and
Crl.M.P.Nos.470 to 472 of 2020

B.Venugopal

.. Petitioner

Vs.

1.M.B.Rajagopal [died]

2.Muthupalaniappan

..Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records and set aside the judgment of the Appellate Court made in C.A.No.177 of 2018 dated 23.10.2019 on the file of the learned I Additional District and Sessions Judge, Erode in dismissing the Appeal filed by the petitioner/appellant herein and confirming the conviction and sentence passed by the learned Judicial Magistrate Fast Track No.I, Erode dated 22.05.2018 in convicting the petitioner herein for the alleged offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for a period of 6 months and do pay compensation of Rs.10,00,000/-.



Crl.R.C.No.80 of 2020

For Petitioner : Mr.T.Shanmugam

For R1 : Died

For R2 : Mr.N.Manoharan

ORDER

This Criminal Revision Case is filed by the accused, who found guilty for issuing the cheque for Rs.10,00,000/- in favour of M.B.Rajagopal to discharge his debt had paid to honour the same. The Courts below found him guilty, sentenced him to undergo 6 months Simple Imprisonment and to pay a compensation of Rs.10,00,000/-. The Trial Court judgment of conviction and sentence confirmed by the lower Appellate Court.

2. The learned counsel for the revision petitioner submitted that there was no money transaction between the complainant Rajagopal and the accused/revision petitioner. Two cheques bearing Nos.467466 and 467467 were given as security to one Om prakash, who is the distant relative of the complainant. In spite of discharging the debt, the cheques given to Om Prakash for security purpose has not been returned, but it



has been misused by the complainant. It is further contended that witness for the prosecution has admitted that the subject cheque is written in two different inks and the blank cheque given as security is being filled up by the complainant to suit his convenience.

3. Referring the deposition of PW.2/the son of the complainant, the learned counsel for the petitioner submitted that most of the fundamental facts leading to the complaint are not known to the witness and he has not produced any documents to show the source or the mode of payment and date, the manner in which the money was paid. He has denied all the questions and he was not aware of the said transaction. This will might the inference that the cheque was not issued for any enforceable debt, but misused by the complainant.

4. The learned counsel for the respondent/complainant submitted that the accused has received money and issued the cheque to discharge the debt and did not reply to the statutory notice, but when the case was pending, he took frequent adjournments promising that he will



Crl.R.C.No.80 of 2020

settle the money. In fact, the complainant/Rajagopal died pending complaint. He was examined in chief on 15.07.2011, but till his death in the year 2017, the accused did not care to cross examine. After the death of the complainant/Rajagopal, his son got himself impleaded with the permission of the Court to continue the case and he was examined as PW.2. The information regarding place of receiving the money, the manner in which the debt occurred and other minor details was put to PW.2 and he has honestly stated that he is not aware of the debts. This will not give any inference that the transaction was not occurred or the cheque issued by the accused was not in connection with the discharge of debt. Since he himself admitted liability and took time to settle the matter and has not taken plea of any defence. When the statutory notice was issued to him, the burden to discharge the onus of presumption has been failed and therefore, the Courts below have rightly held the accused guilty of the offence.

5. The learned counsel for the revision petitioner relying upon the judgment of this Court passed in *N.Lakshmi Vs. P.Damodarasamy*



reported in **2018(1) LW (Crl.) 584 : 2018 ACD 762** wherein, this Court has held that the case of the complainant is not consistent and cogent, whereas, the accused has rebutted the presumption by placing the evidence to probabalise the defence that the cheque was given in the course of the business transaction for security and there is no legally enforceable debt. Therefore, relying upon the judgment rendered in **N.Thambu Vs. R.Shree Ram Kumar** reported in **2018(3) MadWN (Crl.) 56**, wherein, the appeal against acquittal was dismissed, since the complainant has not stated anything either in the complaint or in the proof affidavit about the specific date of borrowal and the date of issuance of the post dated cheque. Further, the ink of the signature and the ink of other particulars found is different and the Trial Court recording the same, acquitted the accused. In appeal, this Court has confirmed the order of acquittal.

6. Though the judgments cited are not relevant for the facts of the case in hand, but the counsel for the respondent circulated a judgment of the Hon'ble Supreme Court rendered in **Kalamani Tex and another**



Crl.R.C.No.80 of 2020

Vs. P.Balasubramanian reported in (2021) 5 SCC 283, wherein, the Hon'ble Supreme Court has stated that once the signature on the cheque is admitted, it has its own consequence and the Trial Court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The defence is not only a blank cheque and also the signed blank stamp papers were given to the complainant, yet the statutory presumption cannot be obliterated.

7. In the said circumstances, the subject cheque is admittedly signed and given by the revision petitioner. His contention is that it was given as security for loan transaction between him and one Om Prakash. Except this plea, which is put as suggestion to the witness that there is no material to substantiate the said defence.

8. The learned counsel for the revision petitioner relying upon the judgment of the Trial Court acquitting the petitioner herein in another cheque case initiated by Om Prakash, try to impress upon this Court that this cheque was given to Om Prakash for security purpose. This Court is



Crl.R.C.No.80 of 2020

WEB COPY

of the view that the acquittal in another cheque case is not a certificate for a defaulter in all other cases. Each case has to be decided based on the evidence let in by the parties. In this case, the Trial Court obviously has recorded that the complaint was laid in the beginning of the year 2011 and the complainant was examined in chief in the month of July 2011. The accused has protracted the case for more than six years till the death of the complainant and when the son of the complainant mounted in the witness box, certain question was put to him, he has exclusively no knowledge about the transaction between the accused and of his father. Therefore, the witness has said that he is not aware of those facts. This will not take away the presumption against the accused. The revision petitioner who has signed the cheque and given to Rajagopal (since deceased) the foundation fact which requires to draw presumption has been proved by the complainant. If the accused wants to rebut the presumption, he ought to have placed some material which could shift the burden on the complainant. Having failed to place the material to that effect, this Court finds no error in the judgment of the Courts below.



Crl.R.C.No.80 of 2020

WEB COPY

9. Hence the Criminal Revision Case is dismissed and the conviction and sentence awarded by the learned Judicial Magistrate Fast Track Court No.I, Erode, in S.T.C.No.91 of 2017, vide impugned judgment dated 22.05.2018, are hereby confirmed. It is stated that pursuant to the order passed by this Court, a sum of Rs.5,00,000/- deposited in S.T.C.No. 91 of 2017 and lying in the account. Therefore, the complainant is permitted to withdraw the amount along with accrued interest if any and for the balance amount the Court can proceed against the accused.

31.03.2023

Internet : Yes/No

Index: Yes/No

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To

- 1.The I Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate Fast Track Court No.I, Erode.



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Crl.R.C.No.80 of 2020

Dr.G.JAYACHANDRAN, J.

rpl

Crl.R.C.No.80 of 2020

31.03.2023