



CrI.R.C.No.103 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.03.2023

Pronounced on : 16.03.2023

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.103 of 2020

L.Ramakrishnan.

... Petitioner/Accused

/versus/

S.Rajaselvakumar.

... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 & 401 of Cr.P.C., to set aside the judgment and conviction dated 13.12.2019 made in C.A.No.384 of 2018 (on the file of the Court of II Additional District and Sessions Judge, Erode) and confirming the judgment and conviction dated 22.10.2018 made in S.T.C.No.381 of 2017 on the file of Judicial Magistrate, Fast Track Court No.1, Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : died



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ORDER

This Criminal Revision Petition is preferred against the concurrent finding of the Courts below holding the revision petitioner guilty of offence under Section 138 of N.I. Act, 1881, for issuing a cheque to the complainant/respondent for a sum of Rs.3,50,000/-, dated 15.05.2017, to discharge the existing debt but failed to honour the cheque. When the cheque was presented for collection on 19.06.2017, it was returned with memo dated 20.06.2017 stating for “OTHER REASON”. The complainant has issued statutory notice on 01.07.2017, calling upon the accused to pay the cheque amount of Rs.3,50,000/-, within the period of 15 days from the date of receipt of the notice. The accused/revision petitioner received the statutory notice on 04.07.2017 but failed to make payment. Hence, a private complaint presented before the Judicial Magistrate No.I, Erode, same was taken on file in S.T.C.No.381 of 2017.

2. To prove the complaint, four exhibits were marked and complainant was examined as P.W.1. To disprove the case of the complainant and rebut the presumption, accused examined himself as D.W.1 and three other



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witnesses and marked three Exhibits as D.W.1 to D.W.3.

3. After considering the evidence, the trial Court had held that the accused has not disproved the case by any preponderance of probability. The defence, that the cheque Ex.P.1, dated 15.05.2017 was given to the complainant in the year 2009 and that has been misused by the complainant is not been proved. The trial Court directed the accused/revision petitioner to pay compensation of Rs.3,50,000/- besides one year S.I.

4. On appeal by the accused, the Lower Appellate Court considered the grounds of appeal in C.A.No.384 of 2018 and confirmed the judgment and conviction rendered by the trial Court.

5. Against the concurrent finding of the Courts below, the present revision petition is filed on the ground that the complainant has not discharged his initial burden of proving that, Ex.P.1 cheque issued towards the legally enforceable debt. The admission of the complainant that, he is the close relatives of the accused, there was money transaction between them and same been



discharged twice, not been properly considered by the trial Court.

6. The case of the accused is that, for the hand loan of Rs.40,000/- borrowed in the year 2014, he made signature in blank papers and cheques and it were handed over to the complainant. In spite of repaying the loan in the year 2016, the stamp papers signed in blank and the cheques were not returned and this was not considered by the Courts below.

7. The Learned Counsel appearing for the revision petitioner would submit that the accused through defence evidence and documents had proved that the subject cheque was drawn from his account opened at Karur Vysya Bank on 09.02.2007 and the subject cheque in the book containing 20 cheque leaves was issued to him by the Bank on 19.05.2009. The cheque following the same serial number was encashed by a third party on 07.09.2011 and therefore, the Courts below ought to have held that the subject cheque No. 825866 ought not to have been issued in the year 2017 to discharge the debt incurred since the cheque No.825873 which is subsequent to Ex.P.1 was encashed as early as 07.09.2011.



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8. In this case, the complainant has mounted the witness box and deposed that Ex.P.1 cheque was issued by the accused to discharge the debt. The subject cheque dated 15.05.2017 marked as Ex.P.1, Bank return memo Ex.P.2 dated 20.06.2017 marked as Ex.P.2, Statutory Notice dated 01.07.2017 marked as Ex.P.3, the notice has been received by the accused on 04.07.2017 to prove the same postal acknowledgement card is marked as Ex.P.4.

9. In the cross examination of P.W.1, it has been suggested that for the earlier loan received and discharged, the cheque was issued as security and that has been misused but the complainant has denied it out rightly. It was suggested to the complainant that the cheque was filled up by the complainant and not by the accused, that suggestion was also denied. When it was suggested to him that the cheque was signed by the accused in the year 2009 and presented only in the year 2017, after filling it up with recent date, same was denied. Also, when questioned whether he is ready to subject the cheque for expert analysis, the complainant has stated he has no objection for the accused to test the writing by expert.



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10. From the record, this Court also finds that the accused has filed an application for seeking expert opinion but same was dismissed on 25.07.2017, for not taking steps to forward the cheque for comparison by hand writing expert. The accused having taken a defence that the cheque Ex.P.1 was in use during the year 2009 when he was working in Karur, later, he has shifted the house and the account was not in operation that is the reason why the cheque was returned for “Other Reason” as found in the bank memo marked as Ex.P.2. In this connection, he has smmoned bank to produce the statement of accounts to indicate that the cheques bearing number prior to Ex.P.1 were presented for collection in the year 2011. He has mounted the witness box and been examined as D.W.1. He admits the receipt of the statutory notice by his mother but has not replied to the statutory notice. He has summoned his Branch Manager Unnikrishnan and examined as D.W.2. He, from the statement of accounts Ex.A.2 has deposed that, 20 cheque leaves were issued to the accused on 19.05.2009 and thereafter, he did not received any cheque leaves. He has used those cheque leaves till 2011 and the last transaction was on 07.03.2011 in respect of cheque no.825861 dated 22.05.2009. The accused has stopped



transacting, after depositing Rs.1,500/- on 18.05.2009 that is the last entry in his Pass Book. Further, D.W.2 has explained that the cheque was returned for insufficient of fund. In the cross examination, he admits that the account was not yet closed by the accused. The wife of the accused examined as D.W.3. She deposed that three cheques was given to the complainant to discharge the loan of Rs.20,000/- borrowed in the year 2009. The loan was discharged in the year 2012. Subsequently, they borrowed Rs.40,000/- from the complainant when the accused met with an accident for which, they obtained signature in blank stamp papers. The said loan of Rs.40,000/- was discharged within two years and the cheque which was given as security in the year 2009 been misused by the complainant. To substantiate all his alleged transaction, the accused has not produced document and the Courts below having considered his evidence has found that the defence put forth by the accused does not probabilise their case since there is no evidence to substantiate and probabilise the same.

11. This Court finds that though an attempt was made by the accused that the cheque (Ex.P.1) was not given to discharge a debt but given as security for the loan, but after discharge of the loan, the cheque was not returned to him,



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had failed to prove the same. While admitting the issuance of cheque, but denies the period of cheque and the purpose for which he issued the cheque, to contradict version of the complainant and his evidence, proof by way of rebuttal evidence is required. Unfortunately, in this case, the accused/revision petitioner has failed to place evidence to that effect. The burden not only to rebut the presumption but also, the burden to prove the earlier transaction and discharge shifts on the accused person. On analysing the ocular evidence of D.W.1 to D.W.4 and the Ex.D.1 to Ex.D.3, this Court finds in the absence of evidence in contrary, there is no reason to interfere the concurrent finding of the Courts below which is based on record and evidence of witnesses.

12. In fine, this Criminal Revision Petition is dismissed.

16.03.2023

Index : Yes/No.
Internet : Yes/No.
Neutral Citation : Yes/No.
Speaking order/Non-speaking order
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1. The II Additional District and Sessions Judge, Erode.
2. The Judicial Magistrate, Fast Track Court No.1, Erode.



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Dr.G.JAYACHANDRAN, J

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Pre-Delivery order made in
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