IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.66 of 2022 and
Crl.M.P.No.646 of 2022

K.Nallasamy ... Petitioner

Vs.

M.Elango ... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the conviction imposed in the judgment dated 31.03.2021 made in C.A.No.157 of 2019 on the file of the learned II Additional District and Sessions Judge, Erode, confirming the conviction imposed in judgment dated 27.05.2019 made in S.T.C.No.110 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode by allowing this Criminal Revision Petition.

For Petitioner	:	Mr.M.Guruprasad
For Respondent	:	Mr.Jeeva Kurala Muthu.C.S for Mr.Barathan.B

ORDER

The petitioner was convicted by the learned Judicial Magistrate, Fast Track Court No.I, Erode (trial Court) in S.T.C.No.110 of 2018, dated 27.05.2019 and sentenced to undergo Simple Imprisonment for one year and to pay a compensation of Rs.5,00,000/- in default to undergo Simple

Imprisonment for two months for offence under Section 138 of the Negotiable Instruments Act, 1881. Aggrieved over the same, the petitioner preferred an appeal before the II Additional District and Sessions Judge, Erode (lower appellate Court) in Criminal Appeal No.157 of 2019 and the lower appellate Court, by judgment, dated 31.03.2021 dismissed the appeal confirming the judgment of the trial Court. Challenging the same present Criminal Revision Case is filed.

2.The gist of the complaint is that on 24.12.2017, the petitioner approached the respondent at his residence and took a loan for Rs.5,00,000/- for his expenses with a promise by 24.01.2018 he would repay the entire amount. At the time of availing loan, the advance interest of Rs.5,000/- was paid by the petitioner. In discharge of the liability, the petitioner issued a cheque No.000104, dated 24.01.2018 for Rs.5,00,000/- drawn on Karur Vysya Bank, Ganapathiypalayam Branch. When the said was presented in the respondent's account in Lakshmi Vilas Bank, Chithodu Branch on 07.02.2018, the same was returned for the reasons that 'Funds Insufficient'. Thereafter, statutory notice, dated 16.02.2018 was sent to the petitioner's office address and residential address. The petitioner received the same on 20.02.2018, but neither paid the cheque amount nor sent any reply. Following the statutory provisions, a complaint was filed before the trial Court in C.C.No.110 of 2018.

3.During trial, the respondent examined himself as PW1 and marked eight documents as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4.The primary contention of the learned counsel for the petitioner is that the petitioner denied the issuance of the cheque to the respondent and according to the petitioner, the cheque has been issued to one Suresh, friend of the respondent who had come in possession of the cheque, filled up the same and lodged the complaint against the petitioner. The cheque (Ex.P1) was not issued by the petitioner in discharge of any liability to the respondent. In this case, the respondent not proved that he has got enough funds to give loan of Rs.5,00,000/-. The respondent admits in his evidence that he was only employed as Assessor in the Central Cooperative Bank, Sivagiri Branch on commission basis earning meager income. Though gives an explanation that he is also in the real estate business receiving income of around Rs.2,50,000/-, he has not produced any Income Tax Returns or any documents in support of the same. Apart from the properties mentioned in Exs.P5 to P8, the respondent has no other property. Added to it, this property is only to the extent of 5½ cents and with this meager property, he cannot have savings of Rs.5,00,000/- with him to give loan. The learned counsel further submitted that the signature found in the cheque (Ex.P1) and in the postal acknowledgment (Ex.P4) varies. The respondent being friendly with one Suresh is not denied though gives an explanation that there are four Suresh and which Suresh the petitioner refers is not known. The respondent also admits that who had filled up the cheque (Ex.P1) is not known. The respondent further admits that he himself took loan from one Kumaravel in the year 2013 and he gave loan to one Sivasubramanian for Rs.5,000/- and Rs.40,000/- to Deivasigamani. He has not given any loan to the extent of lakhs more so Rs.5,00,000/- to the petitioner.

5.The learned counsel further submitted that the statutory notice was not properly sent to the correct address of the petitioner. Earlier, the cheque was returned for the reason signature varies and later, on the second time it was returned for 'Insufficient Funds'. The respondent suppressed this fact and not come with clean hands before the Court. Hence, the complaint is not sustainable. In support of his contention, the learned counsel for the petitioner relied on two decisions (***Sanjay Mishra Versus Kanishka Kapoor @ Nikki and another*** reported in ***2009 SCC OnLine Bom 290*** and ***R.Narender Versus Yakamma Keloth or Kalyan*** reported in ***2021 SCC OnLine TS 533***) for the principle that for non disclosure of financial status to the Income Tax Returns and claiming such huge amount of Rs.5,00,000/- unaccounted would not amount to legally recoverable debt.

6.The learned counsel further submitted that in all cases, it is not necessary the accused to get into the witness box to disprove his case. The standard of proof on the part of the accused and that of prosecution in a criminal case is different, but the prosecution/complainant has to prove the guilt of the accused beyond reasonable doubt. The standard of proof so as to prove a defence of 'preponderance of probability'. In this case, by way of cross examination, the petitioner had probablized his defence, which the Courts below failed to consider. Hence, prays for setting the judgments of the Courts below.

7.The learned counsel for the respondent/complainant opposed the submissions of the learned counsel for the petitioner stating that the issuance of cheque (Ex.P1) and its signature not denied in this case. The petitioner's only defence is that the cheque has been issued to one Suresh. Such being the position, the petitioner neither examined the said Suresh nor got into the witness box to prove that the cheque was not issued to the respondent for any liability. In view of the same, Sections 118 and 139 of the Negotiable Instruments Act, 1881 comes into play. Referring to the evidence of the respondent/PW1 submitted that PW1 clearly stated he had been submitting the Income Tax Returns for the past thirteen years and not suppressed any of his income. The petitioner though questioned the same, thereafter not further pursued the same. The learned counsel further submitted that the signature found in the cheque (Ex.P1) and postal acknowledgment (Ex.P4) are similar, not in total variance. The respondent cross examined with regard to the family status of the petitioner and other aspects to show that the petitioner has got nothing to do with the respondent. On the other hand, the respondent clearly stated about the petitioner's situation, his place of residence and his business showing that the petitioner who is having brick chamber and also doing agriculture. While questioning under Section 313 Cr.P.C., explanation with regard to cheque (Ex.P1) handed over to one Surersh was given but not sufficient to probablize the defence of the petitioner. The categorical case of the respondent is that the cheque has been issued for discharge of the liability and when the cheque got dishonoured, statutory notice issued which had been received, but no reply from the petitioner. In addition, the petitioner neither examined any witness nor got into the witness box to probablize his defence. Thus, both the Courts below considered the evidence of the petitioner and his explanation in detail and convicted the petitioner.

8.The decisions referred by the learned counsel for the petitioner are not applicable to the facts and circumstances of the case because the issue therein was unaccounted money. In this case, it is not so. The respondent earned the money though his profession and business, for which Income Tax Returns also filed. In view of both the Courts finding the petitioner's guilt, the petitioner unable to give any plausible explanation to probablize his defence. Hence, he prays for dismissal.

9.This Court considered the submissions and perused the materials available on record.

10.It is seen that the petitioner went to the respondent's house and took a loan for Rs.5,00,000/- on 24.12.2017 after paying the interest of Rs.5,000/- in advance. In discharge of the liability, the cheque (Ex.P1), dated 24.01.2018 issued to the respondent. When the cheque presented in the bank, the same was dishonoured, thereafter, statutory notice (Ex.P3) issued. The petitioner received the statutory notice and Ex.P4, the acknowledgment card is the proof for the same. Further, the respondent produced Exs.P5 to P8 to show that some properties have been devolved to the respondent's name and he is a man with resources. Hence, the financial capability of the respondent cannot be seriously disputed. The signature in the cheque is not disputed. Though an attempt has been made in the cross examination dispute the signature, thereafter no steps taken by the petitioner to send the cheque for further examination. Hence, the petitioner could not probablize his defence in cross examination.

11.On the evidence and materials, the Courts below rightly found that the respondent proved the case against the petitioner beyond reasonable doubt. In view of the same, this Court is not inclined to entertain this Criminal Revision Case and the same is liable to be dismissed.

12.In the result, this Criminal Revision Case stands dismissed confirming the judgment of the trial Court in S.T.C.No.110 of 2018, dated 27.05.2019 and the judgment of the lower appellate Court in Criminal Appeal No.157 of 2019, dated 31.03.2021.

13.The direction given by the lower appellate Court to the trial Court to secure the petitioner is confirmed. The trial Court to issue conviction warrant against the petitioner and secure him to undergo rest of the sentence.

14.Earlier, the petitioner earlier paid Rs.2,50,000/- to the respondent which is not disputed by him. In the event of petitioner pays the balance amount of Rs.2,50,000/- to the respondent to the credit of S.T.C.No.110 of 2018 on the file of the trial Court, the jail sentence of the petitioner for one year alone considered and set aside. The conviction of the petitioner to pay the cheque amount as compensation alone sustained.

15.The respondent can receive the amount of Rs.2,50,000/- by filing appropriate petition before the trial Court. Of course, no notice is required to the petitioner. The connected Criminal Miscellaneous Petition is closed.

20.12.2023

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1. The II Additional District and Sessions Court,
   Erode.

2. The Judicial Magistrate, Fast Track Court No.I,
   Erode.

M.NIRMAL KUMAR., J.

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Crl.R.C.No.66 of 2022

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