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Crl.R.C.No.200 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.200 OF 2020

P.Balasubramani

..

Petitioner

Vs.

S.B.Krishnasamy

..

Respondent

PRAYER: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment in C.A.No.135 of 2017 dated 23.10.2019 on the file of the 1st Additional District cum Sessions Judge, Salem, confirming the conviction and sentence made in STC No.1280 of 2015 on the file of the Judicial Magistrate – I, Sankagiri, sentencing the petitioner to undergo simple imprisonment for 6 months and to pay compensation of Rs.3,00,000/-.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent : Mr.R.Marudhachalamurthy



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ORDER

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This Criminal Revision Case is filed against the concurrent findings of the Courts below holding that the revision petitioner is guilty of issuing a cheque for Rs.3,00,000/- to discharge the existing debt he owed to the complainant. But the said cheque, on presentation, returned with an endorsement “insufficient funds”. Hence, the revision petitioner is liable to be punished under Section 138 of the Negotiable Instruments Act, 1881.

2. The revision petitioner herein has taken a defence that the subject cheque was given as a security to the loan availed from the wife of the complainant and the said loan was discharged in the year 2015. However, the cheque given as a security has been misused by the complainant and filled up for a sum of Rs.3,00,000/- and presented.

3. While the complainant has examined four witnesses and marked five exhibits, to substantiate his complaint, the accused / revision petitioner has examined three witness and marked four exhibits. Through



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the evidence, the complainant who has mounted the witness box and examined as P.W.1 had spoken about the receipt of the cheque from the accused, which is dated 15.04.2015, drawn on Central Bank of India, Salem Branch and marked as Ex.P1. The presentation of the cheque for collection was unsuccessful and the cheque was returned on 24.04.2015, along with a return memo, marked as Ex.P2. Soon thereafter, statutory notice has been caused by the complainant through his advocate and the notice dated 20.05.2015 marked as Ex.P3 has been received by the accused on 22.05.2015. Refuting the liability, the accused has replied through his counsel vide reply notice dated 06.06.2015 and the same is marked as Ex.P4. The other witnesses for the complainant are the Branch Manager of Central Bank of India, Salem, where the accused had an account and issued the subject cheque marked as Ex.P1. These witnesses deposed that on the date when the cheque came for collection, there was only Rs.100/- balance in the account of the accused. Therefore, the cheque was returned with an endorsement “insufficient funds”. P.W.3, Kandasamy is the Branch Manager of the Salem Central Co-operative Bank, Sankagiri Branch, in



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which, the complainant was maintaining his account and the subject cheque was presented for collection. He has reiterated and corroborated the version of P.W.2 regarding the return of cheque. P.W.4 is the son of the complainant, who has deposed that he witnessed the accused receiving Rs.3,00,000/- from his father and handing over the subject cheque.

4. In defence, the accused has examined one Rajalakshmi, wife of the complainant. She has been examined to prove that Kanthamani is the sister of the accused and she know her from the date she joined as a Teacher in the Balar School. Through her, the complainant and the accused got acquaintance. A sum of Rs.1,00,000/- was borrowed by the accused and the same was repaid in installments. For the said loan, a promissory notice was executed. On repayment, the promissory note was returned. The sister of the accused Kanthamani was examined as D.W.2. She had deposed that a sum of Rs.50,000/- was borrowed by the accused and later repaid. Pointing out this contradiction, the defence raised by the accused was disbelieved by the Trial Court.



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5. Further, the other defence like the execution of cheque not proved, since the colour of the ink differs and the complainant not proved the purpose, for which the loan availed and his source of income to advance loan of Rs.3,00,000/- were all disputed and facts not been proved by the complainant was considered by the Trial Court and rejected holding that having admitted the signature in the impugned cheque and the money transaction, the claim of discharge not been proved and therefore, the statutory presumption that the subject cheque was issued for a legally enforceable debt and the presumption not been rebutted. Having held the accused guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881, the Trial Court sentenced him to undergo six months simple imprisonment and pay a sum of Rs.3,00,000/- as compensation.

6. Aggrieved by the said judgment of conviction and sentence, an appeal was preferred by the accused before the I Additional District Judge, Salem, Crl.A.No.135 of 2017. The appeal came to be dismissed on 23.10.2009 upholding the judgment of the Trial Court. Hence, the present



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revision petition is filed on the ground that the Courts below had failed to appreciate the contradictions in the testimony of P.W.1 and P.W.4 regarding the purpose for which the petitioner borrowed money. The disputed cheque was not given to the respondent / complainant directly, but was entrusted to D.W.1 as security for the money borrowed from her and it was in connection with different transactions.

7. It was contended by the learned counsel for the revision petitioner that when by preponderance of probability, the onus of rebuttal had been established, by the accused, by examining D.W.1 and D.W.2, the Courts below erred in holding that there is a legally enforceable debt in favour of the complainant.

8. The submissions made by the learned counsel for the revision petitioner are considered and the documents were carefully scrutinised. While the accused / revision petitioner admits the signature in the cheque, disputes the fact that it was given to the complainant to



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discharge the enforceable debt. For the said purpose, he has examined D.W.1 – Rajalakshmi and D.W.2 – Kanthamani. D.W. 1 – Rajalakshmi who is none other than the wife of the complainant. D.W.2 – Kanthamani is the sister of the accused. For the reasons best known, the accused has not mounted the witness box. While the wife of the complainant had deposed about the acquittance between her husband and the accused and the earlier money transaction for Rs.1,00,000/-, six or seven years before the date of deposition, the said transaction appears to be against a pro-note executed by the accused and the same been returned after discharge of the loan. Whereas, in the cross examination of D.W.2, the transaction between the accused and the complainant and issuance of cheque as security though spoken, that transaction does not corroborate with the transaction mentioned by the D.W.1 or the transaction which the complainant stated in his complaint and deposition.

9. While the evidence of D.W.1 and D.W.2 do not enhance the case of the defence, to probabalise that the subject cheque was not issued to



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discharge liability, the positive evidence let in by the complainant, by proving that the cheque was signed and given to him by the accused at the time of borrowing Rs.3,00,000/- stands the test of legal scrutiny. Therefore, the Courts below had rightly held that the accused is guilty of issuing cheque without adequate funds and the said cheque was issued to discharge his existing liability. The appreciation of documents and the findings of the Courts below leads to a firm conclusion that there is no error in the finding and hence, the Criminal Revision Petition deserves to be dismissed.

10. Accordingly, the Criminal Revision Case stands dismissed.

17.03.2023

Index : Yes / No
Speaking / Non-speaking order
TK

To

1.The 1st Additional District cum Sessions Judge
Salem.

2.The Judicial Magistrate – I
Sankagiri,

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DR. G.JAYACHANDRAN, J.
TK

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