



Crl RC .No.1315 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.1315 of 2016
and Crl MP No.11858 of 2016

S.A.Amulraj

... Petitioner / Appellant /
Accused

Vs.

F.Suresh Xavier

... Complainant/Respondent/
Respondent

Prayer : Criminal Revision case is filed under Section 397 and 401 of Cr.PC against the order passed in CA No.47 of 2015 by order dated 07.09.2016 on the file of learned Sessions Judge of The Nilgiris at Udagamandalam, confirming the conviction and the sentence passed in CC No.473 of 2011 by order dated 13.03.2015 by the learned Fast Track Court, Judicial Magistrate at Coonoor and for setting aside the same.

For Petitioner : Mr.S.N.Arunkumar
For Respondent : Mr.J.Franklin



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ORDER

This Criminal Revision case has been filed against the judgement and order passed by the Sessions Judge, The Nilgiris in Crl.A.No.47 of 2015 dated 07.09.2016, dismissing the appeal and confirming the judgement and order passed by the District Munsif, (FAC) Fast Track Magistrate, Coonoor in CC No.473 of 2011 dated 13.03.2015, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment and to pay a fine of Rs.1000/- and in default to undergo one month simple imprisonment.

2. The respondent filed a private complaint against the petitioner on the ground that the petitioner borrowed a sum of Rs.2,00,000/- from the respondent as hand loan and towards the said debt, the respondent issued a cheque dated 09.08.2010



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(marked as Ex.P1). When this cheque was presented for collection, the same was dishonored with an endorsement “funds insufficient” on 11.08.2010 and the return memo has been marked as Ex.P3. The respondent therefore issued a statutory notice dated 30.08.2010 (marked as Ex.P4) calling upon the petitioner to pay the cheque amount within a period of 15 days. The petitioner evaded the receipt of the notice and ultimately, the respondent filed the private complaint against the petitioner for offense under Section 138 of the Negotiable Instruments Act.

3. The respondent examined himself as PW1 and marked EX.P1 to P6. The Trial Court on considering the facts and circumstances of the case and on appreciation of evidence came to a conclusion that the respondent has made out a case and hence, applied the legal presumption under Section 139 of the Negotiable Instruments Act in favour of the respondent. It was further held that



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the petitioner did not rebut the presumption. Accordingly, the petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act and was sentenced in the manner stated supra.

4. Aggrieved by the judgement and order passed by the Trial Court, an appeal was filed before the Sessions Judge, The Nilgiris and the same was heard in Crl A No.47 of 2015 and the appeal was dismissed by judgement and order dated 07.09.2016. Aggrieved by the same, this Criminal Revision case has been filed before this Court.

5. Heard Mr.C.Ramkumar, learned counsel for the petitioner and Mr.J.Franklin, learned counsel for respondent.



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6. The main ground that was raised by the learned counsel for the petitioner is that the petitioner was not given sufficient opportunity to argue the case in the appeal and the petitioner must be given one opportunity to establish his defence. Accordingly, the learned counsel for the petitioner sought for remand of the case. The learned counsel further submitted that the respondent had filed many cases against various persons by misusing the cheques and there was no existing debt / liability towards which cheque was given by the petitioner.

7. The respondent claims to have given a hand loan of a sum of Rs.2,00,000/- to the petitioner and towards this debt, the cheque was issued by the petitioner. The case was filed in the year 2011 and inspite of several opportunities given to the petitioner, he did not even chose to cross-examine the respondent. Hence, the



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evidence of the respondent stood un rebutted. Accordingly, the Trial Court considered the evidence available on record and proceeded to convict and sentence the petitioner.

8. In the considered view of this Court, the petitioner has not chosen to cross examine the respondent and hence, his evidence goes unchallenged. Both the Court below were perfectly right in coming to a conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act, must go in favour of the respondent. This Court does not find any ground to interfere with the judgement and order of the Courts below, since the findings do not suffer from any perversity.

9. In the light of the above discussion, the criminal revision case is disposed of in the following manner :-

(a) The petitioner is directed to deposit the



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cheque amount of Rs.2,00,000/- [Rupees two lakhs only) on or before 06.04.2023 before the Trial Court.

(b) If the cheque amount is deposited within the time stipulated by this Court in Clause (a), the offense shall stand compounded and the judgement and order passed by both the Court below will stand set-aside.

(c) If the amount is deposited by the petitioner as directed in Clause (a), it will be left open to the respondent to file an appropriate memo before the Trial Court seeking for withdrawal of the amount and the same shall be permitted by the Trial Court.

(d) If the petitioner fails to deposit the amount as directed in clause (a), the petitioner



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shall surrender before the Trial Court on 05.04.2023 and the petitioner shall be sent to jail to undergo the sentence imposed against him by the Trial Court and

(c) If the petitioner fails to surrender as directed in clause (d), the Trial Court shall take immediate steps to secure the petitioner and send him to jail to undergo the sentence imposed by the Trial Court.

No cost. Consequently, the connected miscellaneous petition is closed.

09.03.2023

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N. ANAND VENKATESH, J.

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To

(1) The Sessions Judge of The Nilgiris at Udagamandalam,

(2) The District Munsif, (FAC) Fast Track Magistrate, Coonoor

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