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CrI.R.C.No.287 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.R.C.No.287 of 2016

Varatharajan

... Petitioner

VS.

1.Palanivel (Died)

2.Jayalakshmi

3.Palaniyammal

4.Dharani

5.Nandhika

6.Guna

... Respondents

[R2 to R6 impleaded as per order in CrI.M.P.No.13733 of 2021 in CrI.R.C.No.287 of 2016 dated 22.12.2021]

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to allow the Criminal Revision Petition and set aside the judgment passed in Cr.A.No.119 of 2014, dated 06.10.2015 on the Sessions Judge, Salem confirming the conviction passed in STC No.27 of 2013, dated 20.08.2014, from the file of Judicial Magistrate (FTC) No.1, Attur.



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For Petitioner

: Mr.P.Ganapathy

For Respondents

: Mr.V.T.Narendiran

ORDER

This Criminal Revision Petition has been filed against the judgment and order passed in Crl.A.No.119 of 2014 by the learned Sessions Judge, Salem, dated 06.10.2015, confirming the judgment and order of conviction and sentence passed by the learned Judicial Magistrate (FTC) No.1, Attur made in STC.No.27 of 2013, dated 20.08.2014.

2.The respondent/complainant filed the private complaint against the petitioner/accused on the ground that the petitioner is known to him and that he had borrowed hand loan from him to the tune of Rs.5,00,000/- (Rupees Five Lakhs only). Towards the repayment of the said amount, the petitioner gave a post dated cheque for a sum of Rs.5,00,000/- (Rupees Five Lakhs only), dated 07.12.2012 drawn on State Bank of India, Attur Branch. When this cheque was deposited by the respondent/complainant for realisation, the cheque was dishonoured with an endorsement "Insufficiency of Funds". The respondent/complainant issued a Statutory Notice dated 26.12.2012 to the petitioner demanding for the payment of the cheque amount. This notice was



received by the petitioner/accused on 29.12.2012 and the amount was neither repaid nor was any reply given for the notice. After waiting for the statutory period, the private complaint came to be filed by the respondent against the petitioner for offence under Section 138 of the Negotiable Instruments Act.

3.The petitioner/accused mainly took the ground that the blank cheque that was given by him towards security has been misused by the respondent. That apart, it was also contented that the petitioner who was working in the Transport Corporation was actually on duty on 07.11.2012 and there was no chance for the petitioner to have issued the post dated cheque in favour of the respondent, as was claimed by the respondent.

4.Both the Courts below on considering the facts and circumstances of the case, came to a conclusion that the respondent/complainant had satisfied the statutory presumption under Section 139 of the Negotiable Instruments Act and the petitioner/accused was not able to rebut the same and accordingly, the petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo rigorous imprisonment for a period of one year. As against the concurrent judgment/order passed by both the Courts below, the present criminal revision petition has been filed before this Court.



5.Heard Mr.P.Ganapathy, learned counsel appearing on behalf of the petitioner and Mr.V.T.Narendiran, learned counsel appearing on behalf of the respondents.

6.The learned counsel for the petitioner mainly relied upon the plea of alibi that was taken before the trial Court and brought to the notice of this Court the evidence of DW3 in this regard. The learned counsel submitted that the petitioner was a trainee conductor, who was on duty on 07.11.2012 and to prove the same, DW3 was put in box and the attendance register was also marked as Exs.D1 and D2. The learned counsel submitted that this clinching evidence was not properly considered by both the Courts below. According to the petitioner, this evidence clearly rebutted the presumption and by preponderance of probabilities, the petitioner has established that he could not have given a post dated cheque on 07.11.2012 at 9 a.m. to the respondent as was contended by the respondent.

7.In the present case, the respondent had advanced a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 07.11.2012 to the petitioner and the petitioner is said to have issued a post dated cheque, dated 07.12.2012, which was marked as Ex.P1. This post dated cheque is said to have been given towards discharge of the



said hand loan. This cheque was dishonoured for want of sufficient funds and immediately thereafter, the statutory notice came to be issued by the respondent on 26.12.2012, which was marked as Ex.P3. The notice was received by the petitioner and there was neither any reply nor the petitioner chose to pay the cheque amount. It is under these circumstances, the complaint came to be filed by the respondent.

8.The specific stand that was taken by the petitioner is that he never borrowed any amount from the respondent and that the respondent has misused a blank signed cheque issue by him during the earlier loan transaction. Therefore, according to the petitioner, there was no existing debt or liability towards which the cheque was given to the respondent.

9.On going through the evidence, it is seen that both the petitioner as well as the respondent are working in the transport corporation. The petitioner is working as a Conductor and the respondent is working as a Driver. According to the petitioner, on 07.11.2012, the respondent could not have paid the loan amount, since he was on duty and to establish the same, the attendance register has been marked on the side of the petitioner.



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10.DW3, who was an official from the Transport Corporation has deposed that the respondent/complainant was on duty only from 8 p.m. on 07.11.2012. Likewise, the petitioner/accused was also not on duty at 9 a.m. on 07.11.2012. In view of the same, both the Courts held that both the petitioner as well as the respondent were not in duty during the morning session and therefore, the petitioner could have received the hand loan from the respondent during this time. Both the Courts below have appreciated the evidence placed and have come to this conclusion.

11.This Court does not find any perversity in the findings rendered by both the Courts below and this Court while exercising its revisional jurisdiction must only test the correctness of the order by looking into illegality or propriety of the finding rendered by the Courts below. This Court cannot act like an Appellate Court and reappreciate the evidence. Keeping this in mind, this Court finds that both the Courts below have properly appreciated the evidence available on record and found that the petitioner/accused has not rebutted the presumption. This Court does not find any ground to interfere with this finding.



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12.The learned counsel for the petitioner/accused submitted that some opportunity must be given to the petitioner to settle the amount and in cases of this nature, it should not be dealt with like a pure criminal case and punishment should be resorted only as the last measure. This Court is not able to appreciate this submission made by the learned counsel for the petitioner. The transaction had taken place in the year 2012 and the complaint came to be filed in the year 2013. For the last ten years, this case has been prosecuted and no effort has been made to settle the matter. Therefore, the petitioner had ample opportunity to settle the matter, if he really intended to do the same. This Court cannot force any settlement, since settlement has to be arrived at only on the understanding between the parties.

13.In the light of the above discussion, this Court does not find any merits in this criminal revision petition and accordingly, the same is hereby dismissed with the following directions:

- (a) The petitioner is given the final opportunity to settle the sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the legal representatives of the respondent on or before 20.03.2023.



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(b) If the petitioner settles this amount as specified in clause (a), the offence will stand compounded under Section 147 of the Negotiable Instruments Act and the conviction and sentence passed against the petitioner by the Courts below will automatically stand set aside.

(c) If the petitioner does not comply with the directions issued in clause (a), the trial Court viz., the learned Judicial Magistrate (FTC), Attur-1, shall immediately issue a non-bailable warrant against the petitioner/accused and he shall be secured and the petitioner shall undergo the sentence as imposed by the trial Court and as confirmed by the Appellate Court.

14. Post this case under the caption 'For Reporting Compliance' on 20.03.2023.

28.02.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



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To
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- 1.The Sessions Judge, Salem.
- 2.The Judicial Magistrate (FTC) No.1, Attur.



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N. ANAND VENKATESH, J.

SSR

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