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Crl.R.C.No.896 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.896 of 2020
and Crl.M.P.No.6301 of 2020

Raja

... Petitioner

Vs.

B.Rajan

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed in C.C.No.86 of 2017 dated 22.09.2017 on the file of the Judicial Magistrate, Fast Track Court, Magistrate Level at Ambattur confirmed in judgment passed in C.A.No.152 of 2017 dated 27.02.2020 on the file of the I Additional District and Session Judge, Thiruvallur.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.Jeremiah Gregory John



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ORDER

This revision petition is directed as against the concurrent findings of the Courts below holding the accused guilty for issuance of two cheques each for Rs.7,50,000/- without funds in his accused. He was punished under Section 138 of the Negotiable Instruments Act to undergo eight months simple imprisonment and to pay compensation of Rs.15,00,000/-, in default one month simple imprisonment.

2. This matter has been adjourned twice in the recent past on 21.04.2023 and 08.06.2023. It was subsequently adjourned today. When the matter taken up today for consideration, the learned counsel appearing for the revision petitioner states that he have not got any instructions from his client. Therefore, this Court had no other option except to peruse the records and pass order after hearing the learned counsel appearing for the respondent Mr. Jeremiah Gregory John, who is present.



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3. Private complaint has been filed by the respondent herein against the revision petitioner alleging that a sum of Rs.10,00,000/- was advanced as loan to him on 10.05.2015. On receiving the money, the accused gave a letter of confirmation regarding the receipt of Rs.10,00,000/- and promised to repay it with 2% interest per month. To discharge the said debt, two cheques bearing No.113594 & 113595 dated 20.09.2016 each for Rs.7,50,000/- were issued. But the said cheques, on presentation, returned for want of fund. Hence the complaint under Section 138 of NI Act.

4. The accused contested the complaint denying the liability as found in the reply notice dated 22.10.2016 which is marked as Ex.P.8, contending that the subject cheques were issued as a security and not for discharge of existing liability. Both the Courts below declined to accept the said defence that the evidence for the accused not sufficient to rebut the presumption of existing debt. Merely alleging that the cheques were given as security without proper and supporting evidence, the presumption under Section 139 of the NI Act doesn't get rebutted.



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5. The concurrent findings of the Courts below challenged in this revision petition on the ground that the trial Court's judgment is perverse and more perverse the lower appellate Court's judgment which was passed without affording any opportunity to the accused/appellant. The next contention of the accused is that the complainant had no fund to advance sum of Rs.10,00,000/- as contented in the complaint and the two cheques which are the subject matter of the complaint did not correlate with the alleged undertaking letter dated 10.05.2014, marked as Ex.P.1.

6. This Court, on perusing the lower appellate Court order passed on 27.02.2020 in CrI.A.No.152 of 2017, finds that the lower appellate Court has formulated points for consideration and thereafter it had discussed the evidence available on records. Regarding arguments of the counsel, after hearing the counsel for the appellant, the lower appellate Court had recorded that the respondent's counsel has not come forward to advance arguments despite sufficient opportunities, hence the averments in the complaint and the materials on records are taken as



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arguments on behalf of the respondent and thereafter had dismissed the appeal on merits based on the records.

7. The contention of the learned counsel appearing for the respondent is that the lower appellate Court dismissed the appeal in spite of the respondent's counsel absence. This argument does not carry any merits consideration, since the lower appellate Court had recorded the said fact and had passed order on merits after considering the evidence on record. It is not the case of the revision petitioner that he as an appellant was not afforded opportunity.

8. The next ground raised in the revision is that the complainant has not proved the source of income. Having admitted the execution of the security letter, which is marked as Ex.P.1, and the cheques marked as Ex.P.2 and Ex.P.4, it is the burden of the accused to rebut the presumption that it were not issued for the amount mentioned in the cheque. In fact, the accused in his questioning under Section 313 of Cr.P.C., admits the borrowing but restricted the borrowing as



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Rs.2,00,000/- and not Rs.10,00,000/-. Since for want of evidence to probablize the defence theory, the Courts below had drawn the presumption under Section 139 of the NI Act and convicted the revision petitioner and the same been confirmed by the lower appellate Court.

9. This Court finds no perversity or illegality or error in the order passed by the Courts below. Hence the Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

15.06.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

rts



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To

1. The I Additional District and Session Judge,
Thiruvallur.
2. The Judicial Magistrate,
Fast Track Court,
Magistrate Level,
Ambattur.



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Dr.G.JAYACHANDRAN, J

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and Crl.M.P.No.6301 of 2020

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