



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL RC No. 1148 of 2014

N.Ramesh

...Petitioner

Vs.

A.Gopalakrishnan

...Respondent.

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the records and set aside the judgment of conviction dated 01.02.2014 made in C.A No. 101 of 2013 on the file of the learned I Additional District and Sessions Judge, Coimbatore, confirming the judgment of the trial Court dated 12.07.2013 made in C.C No. 416 of 2012 on the file of the learned judicial Magistrate, Fast Track Court – I, Magisterial level, Coimbatore and acquit him.

For Petitioner : Mr.P.M.Duraiswamy
For Respondent : Mr.V.Sivakumar

ORDER

This Criminal Revision Case has been filed against judgment of conviction dated 01.02.2014 made in C.A No. 101 of 2013 on the file of



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the learned I Additional District and Sessions Judge, Coimbatore, confirming the judgment of the trial Court dated 12.07.2013 made in C.C No. 416 of 2012 on the file of the learned judicial Magistrate, Fast Track Court – I, Magisterial level, Coimbatore.

2. It is case of the respondent/complainant is that the petitioner borrowed a hand loan for a sum of Rs. 1,70,000/- from the complainant on 18.03.2009 for his business purpose and the same day he issued a post dated cheque dated 20.05.2009 drawn on Centurian Bank, Avianshi Road , Coimbatore, in favour of the complainant and promised to repay the same loan on 20.05.2009. when the respondent presented the cheque for encashment on 20.05.2009 and the same was returned with an endorsement Account closed on 21.05.2009. Thereafter, the complainant/respondent issued a legal notice on 25.05.2009 and the same was received by the accused on 27.05.2009. The petitioner/accused neither paid the loan amount nor reply to the legal notice. Hence ther respondent lodged a complainant under Negotiable Instrument Act.



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3. The learned counsel for the petitioner submitted that in spite of liability disputed by the petitioner/accused, the respondent/complainant not produced any material evidence to prove the same but the Court below failed to appreciate those legal aspects and erroneously shifted the burden on the petitioner's side and convicted him under Section 138 of Negotiable Instrument Act(in short N.I Act) , as such is totally unfair and liable to be set aside. Further he also raised another objection that notice was not served properly and witness from the bank also not been examined on the side of the complainant thereby respondent failed to comply the provisions of the N.I Act. Furthermore as there is not legally enforceable loan but the Court below erroneously convicted the accused as such is un warranted and liable to be set aside.

4. On the other side, the learned counsel for the respondent submitted that accused/petitioner borrowed a hand loan of Rs.1,70,000/- from the complainant/respondent on 18.03.2009 for his business purpose and issued post dated cheque dated 20.05.2009 when it was presented before the bank it was returned as account closed on 21.05.2009. Immediately, the respondent issued notice and the same was received by



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the accused/petitioner but failed to repay the amount. Hence he filed complaint under N.I Act, before the Trial Court.

5. Though the accused took defence that he borrowed only ten thousand from the complainant/respondent in the year 2005 and the same was repaid but the cheque given by him as security was not returned by the respondent/complainant and after lapse of five years, he filed this complaint by using the said cheque. According to the accused/petitioner, he admits the cheque issued but denied the loan transaction as alleged by the complainant and the date of issuance of cheque. Now, the complainant established his case about the cheque issued by the accused. Therefore the burden is on the accused/petitioner to prove that disputed cheque was issued in year of 2005 not in the year of 2009, as rightly pointed out by the Court below there is no independent evidence on the side of the accused/ petitioner to establish the fact. Further, there is no evidences on the side of the accused/petitioner to disprove the alleged transaction as claimed by the complainant. The presumption under Section 139 of N.I Act bound to be rebutted by the accused by way of preponderance of probability. As discussed above, the accused has not



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taken any steps to rebut the said presumption and the same was rightly appreciated by the Court below needs no interference.

6. In the light of the above facts, this Court does not find any perversity or infirmity in the order of the Courts below. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

22.06.2023

Index: Yes/No
Speaking Order/Non Speaking Order
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To

- 1.The I Additional District and Sessions Judge, Coimbatore,
- 2.The judicial Magistrate, Fast Track Court – I, Magisterial level,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

Crl. R.C.No.1148 of 2014

22.06.2023