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Crl.RC.No.1009 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1009 of 2017

Mr.Akilan

...Petitioner/Appellant/Accused

.Vs.

1. Vijayan (Died)
2. V.Vijesh
3. State rep.by
District Public Prosecutor
Coimbatore.

... Respondent/Respondent/ Complainant/

Criminal Revision filed under Sections 397 & 401 of the Code of Criminal Procedure, to set aside the judgment passed against the petitioner in Crl.A.No.249 of 2015 by the III Additional District and Sessions Judge, Coimbatore dated 10.04.2017, confirming the judgment made in C.C.No.150 of 2014, by the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore dated 24.11.2015.



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For Petitioner Mr.B.Nedunchezhiyan

For Respondents Mr.S.S.Swaminathan
for R2

Mr. L.Baskaran
Government Advocate (Crl.side)
for R3

ORDER

This Criminal Revision Case has been filed against the judgment and order passed by the III Additional District and Sessions Judge, Coimbatore made in Crl.A.No.249 of 2015, dated 10.04.2017, confirming the judgment and order passed by the Judicial Magistrate, Fast track Court at Magisterial Level-II, Coimbatore in C.C.No.150 of 2014, dated 24.11.2015, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881, and sentencing him to undergo ten months simple imprisonment and to pay a fine of Rs.3,500/- and in default to undergo two months simple imprisonment.

2.One Vijayan, filed a private complaint against the petitioner on the ground that he is known to the petitioner while they were working in the Military Engineering Service at Coimabtoe and the said Vijayan retired from service. The further case of the complainant is that the petitioner approached him and borrowed hand loan to the tune of Rs.2,50,000/- on 17.07.2013, for meeting some



urgent family expenses. According to the complainant, the petitioner agreed to repay the amount within a period of four months with interest. Since the petitioner did not repay the loan amount with interest as promised, repeated demands were made to the petitioner and ultimately, the petitioner issued a cheque dated 13.12.2013, for a sum of Rs.2,50,000/-. When the complainant presented this cheque for collection, it was returned with an endorsement “funds insufficient”.

3.The complainant thereafter issued legal notice dated 16.12.2013, to the petitioner. The petitioner received this legal notice and he issued a reply notice dated 23.12.201, denying the existence of any debt or liability. It is under these circumstances, the complaint came to be filed by the complainant – Vijayan for offence under Section 138 of the Negotiable Instruments Act,1881.

4.The Trial Court on considering the oral and documentary evidence, came to a conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act, has to be drawn in favour of the complainant since the petitioner did not properly rebut the presumption. Accordingly, the Trial Court convicted and sentenced the petitioner for offence under Section 138 of the Negotiable Instruments Act,1881.



5.The petitioner aggrieved by the Order passed by the Trial Court, filed an appeal in Crl.A.No.249 of 2015, and the same was heard by the III Additional District and Sessions Judge, Coimbatore. During the pendency of the appeal, the complainant – Vijayan died and his son was impleaded as the 2nd respondent by an order dated 14.12.2016.

6.The Appellate Court on reappreciation of evidence and after considering the findings of the Trial Court, did not find any ground to interfere with the judgment and order passed by the Trial Court and accordingly, the Criminal Appeal was dismissed by judgment and order dated 10.04.2017. Aggrieved by the same, the present Criminal Revision Case has been filed before this Court.

7.Heard Mr.B.Nedunchezhiyan, learned counsel for the petitioner, Mr.S.Swaminathan, learned counsel for R2 and Mr.L.Baskaran, learned Government Advocate (Crl.side) for R3.

8.The main grounds that were urged by the learned counsel for the petitioner is that both the Courts below did not properly appreciate the evidence of DW-1. It was further submitted that the petitioner had borrowed only a sum of Rs.20,000/- and it was repaid back and a cheque which was given towards



security was misused and therefore, there was no enforceable debt/liability on the part of the petitioner. That apart, it was argued that the complainant had filed a false case against the petitioner by misusing the cheque.

9.Per contra, the learned counsel for the respondent submitted that both the Courts below have considered all the grounds that were raised by the learned counsel for the petitioner and sufficient reasons have been given for rejecting the claim/defense taken by the petitioner. The learned counsel submitted that the findings of both the Courts below does not suffer from any perversity and hence, there is no scope for interference in this criminal revision case and accordingly, the learned counsel sought for the dismissal of this criminal revision.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.The first ground that was urged by the learned counsel for the petitioner is with regard to the evidence of DW-1. According to the petitioner, it is very clear from the evidence of DW-1 that the petitioner had borrowed only a sum of Rs.20,000/- from the complainant-Vijayan and the subject matter of cheque was given as a blank cheque and subsequently, the amount was also repaid back by the



petitioner and this cheque was not given back to the petitioner. While appreciating the evidence of DW-1, both the Courts below have found that there was a dispute between DW-1 and complainant and the same had led to filing a complaint before the police. The Court below also found that the complainant had retired from service even during the year 2009 and whereas DW-1 was claiming that the petitioner had borrowed a sum of Rs.20,000/- in his presence during the year 2011. Both the Courts below also found that DW-1 was not able to give a proper answer as to how he saw the complainant giving the loan amount of Rs.20,000/- to the petitioner in the year 2011, when the complainant had retired from service in the year 2009 itself. The Court below after carefully considering the evidence of DW-1 have come to a categorical conclusion that the evidence of DW-1 is unreliable and DW-1 had come before the Court and deposed only due to his previous enmity with the complainant.

12.The above finding rendered by both the Courts below with regard to the evidence of DW-1 does not suffer from any illegality or infirmity and such a finding was given on proper appreciation of the evidence of DW-1.

13.Insofar as the claim made by the petitioner that he had repaid back the sum of Rs.20,000/- and that the cheque was only given as a security, both the



Courts below held that the petitioner did not dispute the signature that was found in the cheque. The petitioner also did not properly explain as to how the cheque reached the hands of the complainant. In view of the same, both the Courts below applied the legal presumption under Section 139 of the Negotiable Instruments Act and gave a finding that the petitioner was not able to rebut the legal presumption.

14. In the considered view of this Court, the existence of the debt/liability is evident from the very cheque itself. The petitioner did not dispute the signature that was found in the cheque. The petitioner was also not able to rebut the presumption, since the evidence of DW-1 was found to be completely unreliable. In view of the same, both the Courts below have rightly invoked the legal presumption under Section 139 of the Negotiable Instruments Act and this Court does not find any ground to interfere with the findings of both the Courts below and those findings do not suffer from any illegality or perversity.

15. In the light of the above discussion, this Court does not find any ground to interfere with the judgment and order passed by both the Courts below convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act.



16.The learned counsel for the petitioner submitted that earlier, the petitioner was taking efforts to settle this dispute by paying the entire cheque amount to the respondent. The learned counsel submitted that the petitioner was not able to settle the amount since he had to meet the expenses of his wife, who was suffering from cancer. The learned counsel for the respondent submitted that the respondent was also willing to receive the cheque, but however, the petitioner never paid the amount. Even now, the respondent is willing to receive the cheque amount, if it is settled by the petitioner.

17.In view of the above, this Criminal Revision Case is disposed of in the following manner:

(a) It is left open to the petitioner to pay the entire cheque amount of Rs.2,50,000/- to the respondent on or before **31.03.2023**. If the petitioner settles this amount within the time limit stipulated by this Court, the offence will stand compounded and the judgment and order passed by both the Courts below will stand set aside.

(b) If the petitioner does not comply with the direction issued in Clause (a), the petitioner is directed to surrender before the Trial Court by 03.04.2023, to undergo the sentence imposed against him. and ;



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(c) If the petitioner does not surrender as directed in Clause (b), the Trial Court shall immediately issue a non-bailable warrant and secure the petitioner to make him undergo the sentence imposed against him.

02.03.2023

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

- 1.TheDistrict Public Prosecutor
Coimbatore.
- 2.III Additional District and Sessions Judge,
Coimbatore.
3. Judicial Magistrate,
Fast Track Court at Magisterial Level-II,
Coimbatore.
- 4.The Public Prosecutor
High Court, Madras.



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N. ANAND VENKATESH, J.

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