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Crl.RC No.1236 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.01.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No.1236 of 2017

S.Venkateswaran

... Petitioner

Vs.

L.Chandrasekaran

... Respondent

Criminal Revision Petition is filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the judgment and conviction dated 16.08.2017 made in C.A. No.129/2016 on the file of the II Additional District and Sessions Judge, Erode, confirming the judgment and conviction dated 23.11.2015 made in S.T.C. No.330 of 2014 on the file of Judicial Magistrate (FTC No.I) Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.M.Karthik



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ORDER

This petition has been preferred to set aside the judgment and conviction dated 16.08.2017 made in C.A. No.129/2016 on the file of the II Additional District and Sessions Judge, Erode, confirming the judgment and conviction dated 23.11.2015 made in S.T.C. No.330 of 2014 on the file of Judicial Magistrate (FTC No.I) Erode.

2. The petitioner is the sole accused against whom the respondent has filed a private complaint for the offence under Section 138 of Negotiable Instruments Act before the Judicial Magistrate, (Fast Track Court No.1) Erode. The case has been taken on file in S.T.C. No.330 of 2014 and after trial the accused was found guilty and he was sentenced to undergo six months imprisonment along with fine of Rs.5,000/-. The appeal preferred by the petitioner in C.A. No.129 of 2016 before the II Additional District and Sessions Judge, Erode was also dismissed and the judgment of the trial Court was confirmed. Now this revision has been preferred challenging the concurrent judgment of the Courts below.



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3. The learned counsel for the petitioner submitted that the petitioner had handed over a cheque to one Sathish Kumar who was his partner and the present complainant has misused the cheque by getting it from Sathish Kumar and filed a case.

4. The learned counsel for the respondent submitted that the petitioner did not deny his signature on the cheque; the evidence on the side of the complainant was also not rebutted successfully; even though the petitioner had stated that he had given the cheque to Sathish Kumar, the said fact was also not proved before the Court; the courts below have rightly appreciated the evidence on record and convicted the accused and it does not require any interference.

5. The impugned cheque is dated 30.04.2014 for a sum of Rs.8,00,000/- . As per the case of the respondent, on 30.03.2014 the petitioner availed a loan for a sum of Rs.8,00,000/- and assured to repay the same within one month. He had issued a post dated cheque dated 30.04.2006 in pursuant to his promise, by drawing the same from his Axis Bank Account for a sum of Rs.8,00,000/-. When the cheque was presented for collection on 30.04.2014 at the respondent's bank, it got returned as insufficient funds. After having



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completed the legal mandates, the respondent had filed a private complaint for the offence under Section 138 of Negotiable Instruments Act. The contention of the learned counsel for the petitioner is that the petitioner had not given the cheque directly to the complainant but he had given the cheque to his partner Sathish Kumar and the complainant had taken the cheque from Sathish Kumar and filed a false case against him.

6. It was not the case of the petitioner that he did not sign the impugned cheque. As per Section 139 of Negotiable Instruments Act, when the execution of the cheque is not denied, the initial presumption would lie in favour of the holder of the cheque. The presumption would be to the effect that the cheque has been issued to the legally enforceable debt or liability. However, the petitioner is not without any option and but he could disprove the initial presumption by adducing rebuttal evidence. But the petitioner did not even examine Sathish Kumar who is said to be his partner and to whom he had handed over the cheque. Since the initial presumption that was taken in favour of the complainant was not disproved and the complainant has also asserted the facts during his evidence, the initial presumption had culminated into conclusive proof.



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7. Since the complainant had proved the guilt against the accused with oral and documentary evidence, the learned trial Judge had proceeded to record evidence under Section 138 of Negotiable Instruments Act and convicted the petitioner to undergo six months imprisonment along with imposition of fine of Rs.5,000/-. The learned appellate Judge has also confirmed the appreciation of evidence and application of law.

8. Since there are no valid grounds in this criminal revision petition and no satisfactory reason has been given as to how the judgment of the lower Courts suffers from any factual or legal infirmity, I find no reason for interference of the judgment of the lower appellate Court.

9. Accordingly, this Criminal Revision Petition is dismissed and the judgment dated 16.08.2017 made in C.A. No.129/2016 on the file of the II Additional District and Sessions Judge, Erode is hereby confirmed.

23.01.2023

Index : Yes/No
Speaking Order : Yes / No
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R.N.MANJULA, J.,



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WEB COPY To:

1. The II Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate (FTC No.I),
Erode.
3. The Public Prosecutor,
High Court, Madras.

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