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CRL.RC.No.1282 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.RC.No.1282 of 2017

and

Crl.MP.No.12375 of 2017

R.Vadivel

.. Petitioner/Appellant/Accused

Versus

K.S.Krishnamoorthy

... Respondent/respondent/Complainant

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the entire records in so far relates to order passed in C.A.No.2125 of 2017, dated 22.08.2017 on the file of Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, Erode District whereby reversing the conviction and sentence dated 07.04.2017 passed in S.T.C.No.93 of 2016 on the file of the Judicial Magistrate (Fast Track Court -I), Erode , Erode District and set aside the same.

For Revision Petitioner : Mr. C.Prakasam

For Respondent : Mr.R.Prabhakar for Azoortheen

ORDER

This Criminal Revision Petition has been preferred challenging the judgment of the learned Additional Sessions Judge Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, Erode District, dated



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7/04/2017 in S.T.C.No.93 of 2016.

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2. The revision petitioner is the accused against whom the respondent/complainant has given a complaint for the offence under Section 138 of the Negotiable Instruments Act-1881, for dishonour of cheques.

3.As per the case of the respondent, the petitioner had availed a loan of Rs.4,00,000/-on 23.06.2015 and towards discharge of the same, he has issued a cheque dated 23/9/2015 for a sum of Rs.4,00,000/- and when the cheque was presented for collection on 23/9/2015 and the same was returned as 'opening balance insufficient'. After observing all legal mandates a private complaint has been given for the offence under Section 138 of the Negotiable Instruments Act-1881. After the case was taken on file and the trial was conducted and the learned trial Judge found the accused not guilty and acquitted the accused. The complainant has preferred a criminal appeal in C.A.No.125 of 2017 before the learned Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode and the Appellate Court reversed the judgment of the trial Court and found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act-1881 and convicted him to undergo two years simple



imprisonment with a fine amount of Rs.4,00,000/- in default to undergo six months simple imprisonment and also awarded a sum of Rs. 1,00,000/- as compensation. Aggrieved over the same, the petitioner has preferred this revision.

4.Heard the submissions made by the learned counsel on either side and perused the materials available on record.

5.The learned counsel for the revision petitioner submitted that the petitioner had subscribed to a chit fund with the respondent and he had paid huge amounts to the respondent towards the chit amount; during that time he handed over signed blank cheques to the respondent as security; even after the petitioner had paid the chit amount, the respondent without returning the cheques misused them for the purpose of this case; the learned First Appellate Judge without considering the evidence on the side of the accused, had chosen to find the accused guilty.

6. The learned counsel for the respondent submitted that the petitioner did not deny the execution of the cheque and in that case, the initial presumption as to the legally enforceable debt of the cheque would go in favour of the holder of the cheque; though it is a rebuttable presumption the



petitioner did not produce any acceptable materials to show that the cheque is not supported by consideration.

7.Before adverting into the merits of the judgment of the Appellate Court, it is necessary to appreciate the findings of the learned Trial Judge in order to understand how and why the learned trial Judge had chosen to find the accused as not guilty. The learned Trial Judge had rightly taken the initial presumption in favour of the holder of the cheque in view of the admission of the execution of the cheque. However, he relied the evidence of PW.1 in respect of the chit transaction between the petitioner and the respondent. Reference was made to the evidence of PW.1 wherein he has stated that the accused had joined a chit in the year 2012 for a chit amount of Rs.1,00,000/-. On the side of the complainant, the bank manager was examined as PW.1, he has also stated about certain payments made by the accused to the credit of the complainant's account.

8.The learned trial Judge had observed that PW.1 herself has admitted that the accused was making such payments every month from the year 2012 to 2013. The further observation of the learned trial Judge is that there is no other transaction between the petitioner and the respondent other than



the Chit fund and hence the cheque has been issued only as security for the chit transaction between the petitioner and the respondent. The further observation of the trial Court was that the complainant did not have any balance to the tune of Rs.4,00,000/- in order to lend the said sum as loan to the accused.

9.The learned Appellate Judge had chosen to reverse the judgment by observing that the evidence did not show when the chit amount was received by the accused and how was it relevant to the transaction supported on the strength of the impugned cheque.

10.The records would show that the payments that have been made by the petitioner in favour of the respondent relate back to the year 2012-2013. PW.1 has stated that he had no chit transaction with the accused and the records had proved that there was a chit transaction between the petitioner and the respondent. That alone is not sufficient to ignore the transactions alleged by the respondent in the complaint. The learned trial Judge had presumed that the impugned cheque was made only as a security for the chit prize amount taken by the petitioner.

11.In case the petitioner had paid back the entire chit amount, the



petitioner would have got back the cheques if any, given by him as security to the respondent. The petitioner had not taken any such steps. It is not the contention of the respondent that he had at any point of time transferred the alleged loan amount from his bank to the account of the respondent's through bank transaction. Neither it was stated by the respondent that he had withdrawn the amount on any alleged date from the bank and paid it to the petitioner towards the loan availed by him. The learned trial Judge had given undue significance to the significance in the statement of PW.1 when he has stated that he had availed a loan of Rs.18 lakhs.

12. Basing on the said fact alone the learned trial Judge had come to the conclusion that the respondent did not have the capability to lend a huge sum of Rs.4,00,000/- to the petitioner. It is unreasonable to presume that a person who availed a home loan may not be competent to lend any sum to a third party. It depends upon the option exercised by a person to lend money either to earn interest or to support a known person. So when the presumption under Section 139 of NI Act has already been taken in favour of the respondent that the cheque was issued for legally enforceable debt or liability, the learned trial Judge ought to have seen whether there is any



strong rebuttable proof available to disprove the initial presumption.

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13. Except the chit transaction that had happened in the year 2012 which is not relevant to the date and year of the loan no positive evidence from the side of the petitioner or no doubtful circumstance in the evidence of PW.1 is available in order to conclude that the petitioner had proved that the cheque was not supported by any legally enforceable debt or liability. The learned trial Judge ought to have appreciated the evidence in a holistic manner instead of appreciating the transactions in the year-2012 alone.

14. The categorical case of PW.1 is that the petitioner had availed a loan of Rs.4 lakhs Under such circumstance the learned trial Judge is wrong in arriving at a conclusion that there is no other transaction other than the chit transactions between the petitioner and the respondent. The learned Appellate Judge had re-appreciated the evidence in a manner known to law and found that the complainant has established the probability of the case with acceptable materials but no probable defense had been made out of the chit transactions taken place in the year 2012.

15. The proceedings under Section 138 of NI Act cannot be equated



to a civil suit filed for recovery of money basing upon the Negotiable Instruments Act. Hence the burden of the respondent cannot be akin to prove his entitlement to recovery of money. Since the learned Appellate Judge had rightly re-appreciated and corrected the short sighted approach of the learned trial Judge and found the accused for guilty, I find no reason for interference, except to show some leniency in the matter of punishment.

In the result, this Criminal Revision Petition is **partly allowed** and the connected miscellaneous petition is closed and

(i) the judgment of the learned Appellate Judge is confirmed with regard to the finding of the guilt of the accused and regarding the punishment, the sentence two years simple imprisonment is modified by reducing to 6 months of Simple Imprisonment and the compensation awarded is enhanced from Rs.1,00,000/- to the amount equal to the cheque amount payable within six weeks.

(ii) If the compensation is paid, the learned trial Judge shall disburse the same to the complainant, if he is alive, or his legal heirs and compound the offence.



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(iii) If the compensation is not paid within the said time, the learned

Magistrate shall issue warrant and commit the petitioner to prison to undergo the sentence.

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Index: Yes/No
Speaking/ Non Speaking
Internet: Yes/No
Neutral: Yes/No
jrs



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R.N.MANJULA, J.,

jrs

To:

1. The Additional Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court),
Erode, Erode District.
2. The Judicial Magistrate (Fast Track Court -I),
Erode , Erode District.

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