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Crl.RC Nos.1437 & 1438 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.02.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. Nos.1437 & 1438 of 2017

Crl.R.C. No.1437/2017

K.Sengottaiyan

... Petitioner

Vs.

S.A.Kulandaivel

... Respondent

Criminal Revision Petition is filed under Section 397 & 401 of Criminal Procedure Code, to call for the records in C.A. No.5 of 2016 dated 19.08.2016 on the file of the Principal Sessions Judge, Namakkal confirming the judgment passed by the Judicial Magistrate (Fast Track Court), Tiruchengode, in S.T.C. No.50 of 2015 dated 18.12.2015 to undergo 6 months of Simple Imprisonment and to pay a sum of Rs.5,000/- in default to undergo Simple Imprisonment for one month for the offences under Section 138 of NI Act and set aside the same.



Crl.R.C. No.1438/2017

K.Sengottaiyan

... Petitioner

Vs.

S.A.Kulandaivel

... Respondent

Criminal Revision Petition is filed under Section 397 & 401 of Criminal Procedure Code, to call for the records in C.A. No.4 of 2016 dated 19.08.2016 on the file of the Principal Sessions Judge, Namakkal by modifying the judgment passed by the Judicial Magistrate (Fast Track Court), Tiruchengode, in S.T.C. No.50 of 2015 dated 18.12.2015 to pay cheque amount a sum of Rs.1,50,000/- to the complainant as compensation along with 9% p.a. along with the fine imposed by the trial Court and to that effect the judgment of conviction passed by the learned Judicial Magistrate FTC Thiruchengode for the offences under Section 138 NI Act and set aside the same.

In both petitions:

For Petitioner : Mr.S.Saranraj
For Respondent : Mr.T.L.Thirumalaisamy



COMMON ORDER

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2. The petitioner is the accused against whom the respondent had filed a complaint under Section 138 of Negotiable Instruments Act for dishonour of cheque. The case of the complainant is that on 01.10.2014 the petitioner availed a loan from the respondent for a sum of Rs.1,50,000/- and towards discharge of the same, he issued a cheque dated 31.10.2014 for Rs.1,50,000/-. When the cheque was presented for collection, the same got returned for want of sufficient funds. After complying legal mandates, a complaint has been filed and the case was taken cognizance and trial was conducted. After conclusion of trial, the petitioner / accused was found guilty for the offence under Section 138 of Negotiable Instruments Act and he was convicted and sentenced to undergo six months Simple Imprisonment and imposed with a fine of Rs.5,000/- in default to undergo one month Simple Imprisonment. The petitioner challenged the same by way of filing a Criminal Appeal. The respondent had also filed an appeal by claiming that he is entitled to compensation. Both the appeals are taken up



together in Crl.A. No.4 and 5 of 2016 and the learned appellate Judge confirmed the guilt of the accused and sentenced him to undergo six months imprisonment and also awarded a sum of Rs.1,50,000/- with interest at the rate of 9% per annum along with the fine amount. Aggrieved over that the petitioner preferred these revision petitions.

3. The learned counsel for the petitioner submitted that the petitioner had never seen the respondent and he had no dealings with him; the petitioner is known to one Venkatachalam who is the proprietor of Manickam Tyres. During the course of some transaction between himself and Venkatachalam, he handed over a cheque to Venkatachalam and that was misused by the respondent; the respondent did not have any sufficient means to give a loan of Rs.1,50,000/- to the petitioner.

4. The learned counsel for the respondent submitted that the petitioner did not adduce any acceptable rebuttal evidence in order to prove his contention that the cheque was misused by the respondent; when the petitioner accepts the execution of the cheque, there is a presumption in favour of the respondent; the learned trial Judge and the appellate Judge have rightly dealt the evidence on record and appreciated the same in accordance with law and convicted the accused.



5. The impugned cheque is dated 31.10.2014. According to the respondent he had given a sum of Rs.1,50,000/- as a loan to the petitioner and the petitioner assured to repay it within a month. Towards discharge of the same, he had given a post dated cheque dated 31.10.2014 for Rs.1,50,000/-. The categorical contention of the petitioner is that he never knew the respondent and the impugned cheque was issued to one Venktachalam who is the proprietor of M/s.Manickam Tyres.

6. As rightly stated by the learned counsel for the respondent once the execution of cheque is admitted, the initial presumption under Section 139 of Negotiable Instruments Act about the legally enforceable debt or liability involved in the cheque would go in favour of the respondent or the holder of the cheque. It is for the petitioner to disprove that the cheque was not given for the alleged loan but for some other reason. In fact the petitioner had examined the proprietor of M/s.Manickam Tyres as D.W.2. D.W.2 had stated that the petitioner had not given any cheque to him. In fact the petitioner who examined himself as D.W.1 had stated in his evidence that he asked D.W.2 about the cheque given to him. When he was cross-examined by the respondent and questioned when he enquired D.W.2, he answered that it was after the receipt of the legal notice from the respondent. But the



legal notice was not received by the respondent and it got returned to the sender, since the recipient had not claimed the notice. In that case it is only a false note that the petitioner had met D.W.2 after he received the legal notice.

7. The other witness who was examined as D.W.3 on the side of the petitioner did not support the contention of the petitioner herein. Since the petitioner did not rebut the initial presumption, the same was allowed to become conclusive and in consequence thereof the accused was found guilty.

8. Even though the petitioner had claimed that the respondent did not have the financial capability to lend the loan for a sum of Rs.1,50,000/- that was not substantiated with any evidence. Again when the execution was admitted, all other rebuttal statements should be supported by materials and it cannot remain as mere statements. Since the petitioner had not rebutted any evidence on the side of the respondent and the respondent had proved his case, the Courts below found the accused guilty for the offence under Section 138 of Negotiable Instruments Act.

9. However the learned counsel for the petitioner submitted that there is likelihood for settlement between the parties and four weeks time should



be given.

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10. In view of the above stated reasons, these Criminal Revision Petitions are disposed and :

i) the judgment dated 19.08.2016 made in C.A. Nos.4 & 5 of 2016 by the learned Principal Sessions Judge, Namakkal with regard to the finding of the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act is confirmed and regarding the punishment, the sentence of six months shall be set aside if the accused / petitioner deposits the compensation of Rs.1,50,000/- along with interest within a period of four weeks from the date of receipt of a copy of this order to the credit of S.T.C. No.50/2015 before the learned Judicial Magistrate (Fast Track Court) Tiruchengode.

ii) If the compensation so awarded is paid within a period of four weeks from the date of receipt of a copy of this order, 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 amount is not paid within the said time, the learned Magistrate shall issue warrant of commitment for the accused to undergo the sentence imposed upon him by judgment dated 18.12.2015 in S.T.C. No.50 of 2015.

08.02.2023

Index : Yes/No
Speaking Order / Non-speaking order
Neutral Citation : Yes / No
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To:

1. The Principal Sessions Judge, Namakkal.
2. The Judicial Magistrate (Fast Track Court), Tiruchengode



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R.N.MANJULA, J.,

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