



Crl.RC No.1448 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.02.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No.1448 of 2017
and Crl.M.P. No.14394 of 2017

L.Susaiyappan

... Petitioner

Vs.

Arjunan

... Respondent

Criminal Revision Petitions are filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order dated 18.07.2017 passed by the Principal Sessions Judge, Namakkal in C.A. No.2 of 2017 confirming the conviction and sentence dated 27.12.2016 passed by the Judicial Magistrate Court, (FTC), Tiruchengode in S.T.C.No.147/2016.

For Petitioner : Mr.K.C.Karl Marx

For Respondent : Mr.C.Paraneedharan



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ORDER

This petition has been preferred challenging the order of the Principal Sessions Judge, Namakkal, dated 18.07.2017 passed by in C.A. No.2 of 2017.

2. The petitioner is the accused against whom the respondent had filed a complaint under Section 138 of Negotiable Instruments Act. As per the case of the respondent, the accused intended to sell his house at Plot No.1050, Pallipalayam Housing Unit by fixing the sale price at Rs.6,15,000/- and for which the respondent had paid an advance of Rs.4,05,000/- to the accused and they have entered into a sale agreement. During that time it was agreed between the petitioner and the respondent that the petitioner should clear the pending dues to the Tamil Nadu Housing Board and get the sale deed from the Tamil Nadu Housing Board and then execute a sale in favour of the respondent within a period of three months from the date of sale agreement. The petitioner did not perform his part of the contract as he could not get the sale deed executed by the Tamil Nadu Housing Board. Hence, towards refund of the sale amount, he issued two cheques for a sum of Rs.4,00,000/- and Rs.2,00,000/- respectively dated 10.04.2014 and 30.04.2014. When the respondent presented the cheques for collection on 21.05.2014, the same was returned for insufficient funds.



Thereafter the respondent issued legal notice and after complying the legal mandates, he filed a private complaint against the petitioner for the offences under Section 138 of Negotiable Instruments Act. The trial Court found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment for a period of six months and fine of Rs.5,000/- in default to undergo Simple Imprisonment for a period of one month for the offence under Section 138 of Negotiable Instruments Act. The accused has preferred an appeal and the learned appellate Judge dismissed the appeal by confirming the judgment of the trial Court. Aggrieved by the judgment of the lower appellate Court, the present revision petition has been preferred.

3. The learned counsel for the petitioner submitted that even according to the respondent the transaction between him and the respondent is the sale agreement in respect of the house belongs to the petitioner; during the course of negotiations they have also entered into a sale agreement; if for any reasons the petitioner had violated the terms of contract and failed to execute the sale deed as agreed, the respondent has got a remedy before Civil Court by way of filing a suit for specific performance and he cannot file the complaint under Section 138



of Negotiable Instruments Act by misusing the cheques given by the petitioner as security; since the cheques were given on different dates and not on the same day, that would only show that they were misused by the respondent with some ulterior motive; the learned trial Judge and the appellate Judge did not consider the improbability of the respondent's case and had chosen to convict the petitioner.

4. The learned counsel for the respondent submitted that the execution of the cheque was not denied by the petitioner and hence the respondent is entitled to get an initial presumption under Section 139 of Negotiable Instruments Act in his favour; when the cheques were issued towards discharge of dues to be settled by the petitioner, he is bound to honour the cheques; since the cheques were presented for collection and they were returned for insufficient funds, the respondent has rightly filed the complaint under Section 138 of Negotiable Instruments Act; after appreciating the evidence in fair and a proper manner, the Courts below have rightly found the accused guilty and convicted him.

5. The fact that the petitioner and the respondent were known to each other and they have a deal between themselves in respect of selling the house for a sum of Rs.6,15,000/- is not disputed. Since the sale deed cannot be executed



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by complying the terms of the sale agreement, the parties found it convenient to cancel the sale agreement and the petitioner agreed to return the amount received by him from the respondent along with interest. Towards discharge of the same, the petitioner had issued two cheques for a sum of Rs.4,00,000/- dated 10.04.2013 and Rs.2,00,000/- dated 30.04.2014 respectively.

6. Even though it is correct for the learned counsel for the petitioner to state that the respondent has got a remedy by filing a suit for specific performance, it is seen that the respondent had not chosen to file any such suit, but he had chosen to revoke the agreement. It is probably because the non-settlement of dues of the petitioner to the Tamil Nadu Housing Board and eventually not obtaining the sale deed from Tamil Nadu Housing Board in his favour.

7. Whatever may be the reason, the parties have agreed to revoke the contract and during that course the petitioner has agreed to make good the loss caused to the respondent and also to return the advance money. So the above evidence on record would only show that the petitioner and the respondent are not strangers and it is probable that the petitioner could have issued cheques in favour of the respondent in connection with the sale agreement entered into



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between themselves. The petitioner did not deny the execution of the cheques and his only contention is that the cheques were not executed for any legally enforceable debt or liability. When the executant of the cheque accepts the execution, the initial presumption will go in favour of the respondent. As stated above the respondent had proved that the cheques were issued by the petitioner towards discharge of the dues to be paid to him by way of return of advance amount along with some compensation for the loss suffered by him in the transactions.

8. The petitioner did not even examine himself as witness and he had not produce any positive evidence to disprove the initial presumption that had accrued in favour of the respondent after he had proved the foundational facts. With the evidence of the respondent, the initial presumption evolves into proof. Hence the Courts below have rightly come to the conclusion about the legally enforceable nature of the impugned cheques and had chosen to record that the accused is guilty for the offence under Section 138 of Negotiable Instruments Act. In my considered opinion, the findings rendered by the Courts below does not suffer from any factual or legal infirmity so as to warrant interference.



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9. Accordingly, this Criminal Revision Petition is dismissed and the judgment dated 18.07.2017 passed by the Principal Sessions Judge, Namakkal in C.A.No.2/2017 is confirmed. Connected miscellaneous petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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To:

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



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R.N.MANJULA, J.,

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