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Crl.R.C.No.1468 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.R.C.No.1468 of 2017

A.R.Rajendran

... Petitioner

Vs.

N.Jagadesh Chandran

... Respondent

Prayer: The Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C. to set aside the conviction imposed in the Judgment dated 26.07.2017 made in C.A.No.28 of 2017 on the file of the First Additional District and Sessions Court, Erode confirming the conviction imposed in the Judgment dated 02.01.2017 made in STC No.380 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.M.Vignesh for
Mr.C.S.Saravanan

ORDER

This Criminal Revision Case has been filed against the Judgment and Order passed in Crl.A.No.28 of 2017 by the I Additional District and



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sessions Judge, Erode, dated 26.07.2017, confirming the Judgment and order passed by the Judicial Magistrate (FTC) No.1, Erode in S.T.C.No.380 of 2013 dated 02.01.2017, convicting the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo six months Simple Imprisonment and to pay compensation of a sum of Rs.5,74,500/- under section 357 (3) of Cr.P.C.

2. The respondent/complainant filed a private complaint by stating that he was doing fire wood business and the petitioner used to purchase fire wood on credit basis. In the course of the business transaction, the petitioner had to settle under various credits totalling a sum of Rs.5,74,500/-. In discharging all his liabilities, the petitioner had issued 4 post dated cheques (marked as Ex.P1 series.

3. The further case of the respondent is that these cheques were deposited and it was returned with an endorsement “funds insufficient”. Hence, the respondent issued a statutory notice (Ex.P3). The said notice was received and acknowledged by the petitioner (Ex.P4). Since the



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petitioner neither issued a reply notice nor repaid the cheque amount, the private complaint came to be filed by the respondent.

4. The trial Court on appreciation of the oral and documentary evidence, came to a conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act, must go in favour of the respondent and that the petitioner failed to rebut the presumption. Accordingly, the petitioner was convicted and sentenced by the trial Court.

5. Aggrieved by the same, the petitioner filed a Criminal Appeal and the same was taken on file in Crl.A.No.28 of 2017. The appellate Court re-appreciated the evidence and considered the findings of the trial Court and found that there is no ground to interfere with the Judgment of the trial Court and accordingly, the Criminal Appeal was dismissed by Judgment and order dated 26.07.2017. Aggrieved by the same, this Criminal Revision Case has been filed before this Court.



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6. Heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.M.Vignesh, learned counsel appearing for Mr.C.S.Saravanan, for respondent.

7. The main ground that was urged by the learned counsel for the petitioner is that the petitioner had a business transaction only with one Gopal and the cheques were given to the said Gopal as security. The petitioner also repaid the amount and inspite of the same, the said Gopal retained the cheques and it is only these cheques which were misused by the respondent.

8. The learned counsel further submitted that the petitioner did not have any business transaction with the respondent and hence there is no question of any legally enforceable debt or liability towards which the cheques were issued. The further submission that was urged by the learned counsel for the petitioner is that all the cheques were blank cheques and it



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was filled up by the respondent on his own and both the Courts below did not properly appreciate all these grounds that were taken by the petitioner.

9. Per contra, the learned counsel for the respondent submitted that the respondent had clearly established the business transaction and the amount that is payable by the petitioner by marking Ex.P5 series. The learned counsel further submitted that it is only towards the credit, post dated cheques were issued by the petitioner and the same got dishonoured when it was presented for collection. The learned counsel further submitted that both the Courts below have properly appreciated the evidence and there is no perversity in the findings and there is no ground to interfere with the same and accordingly the learned counsel sought for dismissal of the Criminal Revision Case.

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



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11. The petitioner had taken a very specific defence to the effect that he had transaction with one Gopal and the cheques were given as security only towards those transaction. If that is the specific stand taken by the petitioner, the said Gopal ought to have been examined before the trial Court. However, the petitioner failed to examine the said Gopal and hence the defence taken by the petitioner was merely *ipse dixit* without any supporting materials.

12. The respondent had established the business transaction which resulted in the liability on the part of the petitioner by marking Ex.P5 series. Even assuming that blank cheques were given, Section 20 of the Negotiable Instruments Act will come into play and the principle of inchoate instrument has been extended even to cheques and the law has been settled through various reported Judgments.

13. The business transaction took place between the petitioner and the respondent and towards the resultant liability, the cheques have been issued



and it has been established by the respondent and hence the legal presumption under Section 139 of the Negotiable Instruments Act has to necessarily lean in favour of the respondent. The petitioner was not able to rebut the presumption even on the test of preponderance of probabilities.

14. Both the Courts below have properly appreciated the evidence and have come to the correct conclusions and this Court does not find any illegality or perversity warranting interference by this Court in exercise of its revisional jurisdiction.

15. In the light of the above discussions, this Court does not find any ground to interfere with the conviction and sentence imposed by the trial Court and as confirmed by the appellate Court and the same is hereby confirmed.

16. This Court enquired the learned counsel for the respondent as to whether the respondent is willing to receive the cheque amount of Rs.5,74,500/-. The learned counsel for the respondent fairly submitted if the



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entire cheque amount is paid to the respondent, the respondent will not have any objection to compound the offence.

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

- (a) the petitioner had deposited a sum of Rs.1,50,000/- pursuant to the condition imposed while the sentence was suspended by this Court pending this Criminal Revision Case in Crl.M.P.Nos.14541 and 14542 of 2017 by an order dated 22.11.2017. If this amount is taken into consideration, the petitioner has to pay/deposit the balance amount of Rs.4,24,500/-. The petitioner is directed to deposit the sum of Rs.4,24,500/- (Rupees Four lakhs twenty four thousand five hundred only) on or before **17.04.2023** before the trial Court;
- (b) if the petitioner deposits the amount as directed in Clause (a), the offence will be compounded and order of conviction and sentence passed by both the Courts below will stand set aside;
- (c) if the petitioner complies with the direction issued in Clause (a), it will be left open to the respondent to file a Memo before the trial Court and



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he shall be permitted to withdraw the entire amount viz., Rs.5,74,500/-

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(d) if the petitioner fails to comply with the direction in Clause (a), the petitioner shall surrender on **18.04.2023** and the trial Court shall confine the petitioner to prison to undergo the sentence; and

(e) if the petitioner fails to surrender as provided in Clause (d), the trial Court shall take immediate steps to secure the petitioner and to make him undergo the sentence imposed against him.

02.03.2023

Index: Yes/No
Speaking order/Non speaking order
vum

Index : Yes / No
Speaking order / Non speaking order

To:

1. The Additional District and Sessions Court, Erode.
2. The Judicial Magistrate, Fast Track Court No.1, Erode.

N.ANAND VENKATESH,J.



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