IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 01.02.2023**

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

Crl.R.C.No.1469 of 2017

P.Kuppusamy ... Petitioner

Vs.

Narayanasamy (died)
R.Shanmugam ... 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 26.10.2017 made in C.A.No.54 of 2017 on the file of the learned Second Additional Sessions Court, Erode confirming the Judgment, dated 04.02.2017 made in S.T.C.No.584 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.M.Ganesh for
Mr.N.Manokaran

For Respondent : Mr.M.Kathik for
Mr.I.C.Vasudevan

ORDER

This Criminal Revision has been preferred challenging the conviction and sentence imposed in the Judgment, dated 26.10.2017 made in C.A.No.54 of 2017 on the file of the learned Second Additional Sessions Court, Erode confirming the order, dated 04.02.2017 made in S.T.C.No.584 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court No.1, Erode.

2. The revision petitioner is the sole accused against whom the respondent had given a complaint under Section 138 of the Negotiable Instruments Act for dishonour of cheque. The allegation made by the respondent is that the petitioner had availed a loan of Rs.3 lakhs from the respondent on 26.01.2013 and to discharge the sum, he had issued a post dated cheque on 25.04.2013 for 3lakhs drawn from ICICI Bank, Erode Branch. As requested by the petitioner, the respondent has presented the cheque for collection through SBI Bank, Erode on 27.04.2013 and the same was returned on 29.04.2013 as "funds insufficient". The notice sent by the respondent was also not served on the petitioner and it was returned as left without instructions. After complying the legal mandates, private complaint

was filed by the respondent against the petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was taken in S.T.C.No.584 of 2014. After completion of trial, the petitioner was found guilty and he was convicted and sentenced to undergo 6 months Simple Imprisonment and imposed with a sum of Rs.3 lakhs as compensation to be payable to the respondent. Aggrieved over the said order of conviction and sentence, the accused preferred an appeal in C.A.No.54 of 2017 before the II Additional Sessions Judge, Erode and the same was dismissed, against which the present Revision has been preferred.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent.

4. The learned counsel for the petitioner submitted that the petitioner never knew the respondent. The petitioner's brother viz., Kannan had some money transaction with DW2 viz., C.Subramaniam who is the friend of the respondent. During that course, the petitioner's brother Kannan had issued a cheque to DW2 and that was handed over to the respondent and the case has

been filed basing on the said transaction. The cheque is not supported by any debt or legally enforceable liability. DW2 was examined as a witness on the side of the petitioner/accused and during his examination he did not know about his transaction with the petitioner's brother. However, the evidence of D.W.3 who is the senior bank manager would show that DW2 is related to the respondent and they had transaction between themselves. By claiming that the rebuttal proof was satisfactorily adduced, the learned counsel for the petitioner submitted that the same was not properly appreciated by the Courts below.

5. The learned counsel for the respondent submitted that once the signature in the cheque is not denied, the presumption under Section 138 of the Negotiable Instruments Act will go in favour of the holder of the cheque. The petitioner did not take any legal action by alleging that there is a cheque issued by his brother Kannan to D.W.2, even after the loan availed by Kannan for D.W.2 got discharged. In fact, D.W.2 has refused that he did not hand over any cheque to the respondent / complainant. The petitioner did not examine his brother Kannan as his witness. Neither the petitioner

nor his brother Kannan had taken any steps to recover the cheque which is alleged to have been handed over to D.W.2 as security. Since the respondent had proved the guilt of the accused with relevant materials, the Courts below concurrently found the accused guilty and convicted him. The impugned cheque dated 25.04.2013 which is marked as Ex.P1 is for Rs.3 lakhs drawn from ICICI bank. The signature contained in the impugned cheque is not in dispute. The one and only contention of the petitioner is that the cheque was not issued by him to the respondent for any legally enforceable debt or liability, but it was given as security by his brother Kannan to D.W.2 who is the friend of the respondent. Even though the petitioner did not choose to examine his own brother Kannan, he has examined D.W.2 Subramaniam who is said to be the friend of the respondent. However, the said Subramaniam had deposed that he did not give any cheque to the respondent.

6. The learned counsel for the petitioner submitted that D.W.2 has stated in his chief examination that he did not have any transaction with the respondent, but the evidence of D.W.3, the bank manager would prove

otherwise. Even if it is true that D.W.2 and the respondent were friends and they had transaction between themselves, the fact remains that the impugned cheque was sent and drawn by the respondent himself. The brother of the respondent was not examined as a witness in order to show what kind of transaction he had with D.W.2 and at what point of time he had given the impugned cheque to D.W.2. The learned trial Judge rightly observed that neither the petitioner nor his brother Kannan had taken any steps to recover the impugned cheque after the alleged loan was repaid by Kannan. Knowing pretty well about the consequences of the signed cheque, the petitioner did not inform his Bank Manager to stop payment from his account. The cheque of the petitioner cannot be considered as a rebuttal proof to rebut the presumption revolving Ex.P1, Cheque. Neither the petitioner nor his brother had given any police complaint much less the petitioner had not chosen to give any reply to the legal notice sent by the respondent.

7. The learned trial Judge has properly appreciated the materials on

record along with the conduct of the petitioner, to arrive at a conclusion that the cheque has been issued for a legal enforceable debt or liability. Since the learned appellate Judge did not find any lapse on decision of the learned trial Judge, he confirmed the order of the learned trial Judge by dismissing the appeal. Since no valid ground for revision has been successfully made out, I feel it is unnecessary to interfere with the Judgment of the learned II Additional Session Judge, Erode.

8. However, the learned counsel for the petitioner submitted that considering the age of the petitioner some liberty should be shown in the matter of punishment. Taking into consideration the fact that the petitioner is a senior citizen, I feel it is appropriate to modify the sentence alone. Accordingly, the sentence of 6 months Simple Imprisonment is modified as 3 months Simple Imprisonment. The imposition of compensation at Rs.3lakhs remain unaltered. It is also seen from the order of this Court, dated 22.11.2017 in Crl.M.P.Nos.14543 and 14545 of 2017 that a sum of Rs.75,000/- has been imposed while granting suspension of sentence against the accused. If the said amount had been deposited by the petitioner, the

respondent is at liberty to file an appropriate application before the trial court and withdraw the same and apportionate it towards the part of the compensation ordered.

9. With the above modification and observation, this Criminal Revision Case is partly allowed.

01.02.2023

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

R.N.MANJULA,J.

vum

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