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CrI.RC No.1497 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

CrI.R.C. No.1497 of 2017  
and CrI.M.P. No.14911 of 2017

K.Govindaraj

... Petitioner

Vs.

G.Sampath

... Respondent

Criminal Revision Petition is filed under Section 397(1) and 401 of Criminal Procedure Code, to call for the records and set aside the judgment dated 10.10.2017 made in C.A. No.147 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore which was confirming the judgment of the trial Court dated 14.07.2016 in C.C. No.773 of 2013 on the file of the learned Judicial Magistrate, Fast Track at Magistrate Level-1, Coimbatore and acquit the petitioner by allowing this revision.

For Petitioner : Mr.S.Ganesh Kumar

For Respondent : Mr.K.Karthik Raja



**ORDER**

This Criminal Revision Petition has been filed challenging the order of the learned III Additional District and Sessions Judge, Coimbatore dated 10.10.2017 made in C.A. No.147 of 2016.

2. The petitioner is the accused against whom the respondent has preferred a private complaint for the offence under Section 138 of Negotiable Instruments Act. The case of the respondent is that the petitioner had borrowed a sum of Rs.5,00,000/- from the complainant on 25.06.2011 for his urgent business requirements and on the same day itself he had issued a post dated cheque dated 08.08.2011 for a sum of Rs.5,00,000/- drawn on Standard Chartered Bank, R.S. Puram Branch, Coimbatore towards discharge of the said loan. On the assurance given by the petitioner, the respondent presented the cheque for collection through Indian Overseas Bank on 08.08.2011 but it was returned for want of funds on 10.08.2011. After issuing legal notice on 12.08.2011 and complying the legal mandates, the respondent had filed this complaint under Section 138 of Negotiable Instruments Act. During the course of trial on the side of the petitioner one witness was examined as P.W.1 and Exs.P1 to P4 were marked. On the side of the defendant no witness was examined and no documents were marked.



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3. After conclusion of trial, on considering the evidence available on record, the trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment two months along with fine of Rs.3,000/- in default to undergo Simple Imprisonment for a further period of two months. Aggrieved over the same, the petitioner had preferred an appeal in Crl.A.No.147/2016 and the same was also dismissed by confirming the judgment of the trial Court. The present revision has been preferred challenging the judgment of the lower appellate Court.

4. The learned counsel for the petitioner submitted that the Courts below have not considered the evidence in a proper manner; the respondent did not prove before the Court that the cheque was given in order to discharge the legally enforceable debt; even if it is true that the petitioner had availed a loan from the respondent, the cheque would have been issued as security and not for discharging any legally enforceable debt; hence the judgment of the appellate Court should be set aside.

5. The learned counsel for the respondent submitted that the



petitioner had accepted the execution of the cheque and hence the respondent is entitled to the presumption under Section 139 of Negotiable Instruments Act; even though the said presumption is rebuttable, the petitioner has not adduced any rebuttable evidence to disprove that the cheque was not supported by consideration as claimed by the respondent; the Courts below have rightly appreciated the evidence on record and found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and it is does not require any interference.

6. The respondent who had filed the complaint had examined himself as P.W.1. wherein he had stated about the loan borrowed by the petitioner on 25.06.2011 to the tune of Rs.5,00,000/-. He also stated that on the same day itself the petitioner had issued four post dated cheque dated 08.08.2011 for a sum of Rs.5,00,000/- drawn on Standard Chartered Bank, R.S.Puram Branch, Coimbatore, bearing cheque No.089180. After the cheque was presented for collection it was dishonoured due to insufficient funds and thereafter the respondent had sent a legal notice on 10.08.2011. The said legal notice was received by the petitioner on 13.08.2011 and the acknowledgment card is marked as Ex.P4 to prove the same. Even after



receiving the legal notice the petitioner had not preferred to send any reply by stating the contentions which the petitioner wants to make before this Court.

7. Since the petitioner did not deny his signature of the impugned cheque, it has to be taken that the execution of the cheque is admitted by the petitioner. Once the execution is not denied, the bearer of the cheque is entitled to get the initial presumption under Section 139 of the Negotiable Instruments Act in his favour. Unless and until the initial presumption is rebutted by the petitioner through any rebuttal evidence, the fact remains that the cheque was issued only for a legally enforceable debt or liability.

8. Even though the petitioner had raised a contention now that the respondent did not have any sufficient means to lend a sum of Rs.5,00,000/- as loan, the petitioner did not adduce any positive evidence to show the same. The suggestions made during the cross-examination of P.W.1 are the mere statement that the respondent do not have any means to lend the cheque amount and it will not be considered as rebuttable proof unless it is substantiated by some positive evidence.



9. The further submission made by the learned counsel for the petitioner is that the even if the cheque was issued that could only for security and not for discharging any legally enforceable debt. The mutual contradictory submission or rather a presumptive submission made by the petitioner itself would show that he is not confident of his defense.

10. Since the initial presumption along with the materials produced by the respondent are substantiated before the Court, the initial presumption becomes conclusive in the absence of any rebuttal and that would prove the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act. Hence the Court below have rightly found the accused for the offence under Section 138 of the Negotiable Instruments Act.

11. In view of the above stated reasons, this Criminal Revision Petition is dismissed. Connected miscellaneous petition is closed.

**20.02.2023**

Index : Yes/No  
Speaking Order : Yes / No  
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Crl.RC No.1497 of 2020

To:

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1. The III Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Fast Track at Magistrate Level-1, Coimbatore.



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**R.N.MANJULA, J.,**

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