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CRL.RC.No.1499 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.RC.No.1499 of 2017

and

Crl.MP.Nos.14937 &14938 of 2017

Venkataraman

.. Petitioner/Appellant/Accused

Versus

Mahesh Kumar Porevel

... Respondent/Respondent/Complainant

Criminal Revision has been filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment dated 21.06.2017 made in Criminal Appeal No.42 of 2015 on the file of the I Additional District and Sessions Court, Salem in modifying the Judgment dated 16.02.2015 made in STC.No.1081 of 2011 on the file of the Judicial Magistrate No.III Salem and to allow the above Criminal Revision.

For Revision Petitioner : Mr. C.Prabakaran

For Respondent : Mr.B.Hemenoth

ORDER

This Criminal Revision has been filed challenging the judgment of the learned I Additional District Sessions Judge, Salem dated 21.06.2017 in



Crl.A.No.42 of 2015.

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2.The petitioner is the accused against whom the respondent has filed a private complaint for the offence under Section 138 of NI Act. According to the complaint made by the respondent, the petitioner had availed a loan of Rs.1,80,000/- and towards the discharge of the same he had issued a cheque for Rs.1,80,000/- dated 07.06.2003. When the cheque was presented for collection, it was returned as 'insufficient funds'. After complying the legal mandates, the complaint was filed for the offence under Section 138 NI Act. After the conclusion of the trial, the learned trial Judge had recorded the guilt of the accused and chosen to convict him to undergo 6 months simple imprisonment and to pay a fine of Rs.2,000/- and also awarded a compensation of Rs.20,000/-. The petitioner had challenged the same by way of preferring an appeal in C.A.No.42 of 2015 and the same was partly allowed by modifying the sentence by confirming it to the imprisonment and fine and setting aside the order of the compensation. Aggrieved over the same the petitioner has preferred this revision.

3.Heard the submissions made by the learned counsel on the either side and perused the materials available on record.



4.The learned counsel for the petitioner submitted that the courts have recorded the concurrent findings about the guilt of the accused, only because the accused was not examined himself and that he did not send any reply notice; the petitioner had examined one witnesses by name Ranganathan (DW.1) by his side, marked the documents as Ex.D1 to Ex.D3 which are the encumbrance certificates pertaining to the property of one Palaniammal and the copy of the said sale consideration between the complainant and the said Palaniammal.

5.The categorical defence taken by the petitioner is that the cheque was issued by her only as security for some other transactions between the complainant and someone else. The execution of the cheque is not denied but its enforceable nature alone is denied. When the execution of the cheque has been admitted, the initial presumption goes in favour of the respondent with regard to the enforceable legal debt or liability of the cheque, the burden would shift on the petitioner to rebut the same.

6.When the petitioner denied the said fact, he has got the burden to discharge the same by adverting rebuttal evidence. The petitioner had not chosen to come to box and he has not even sent any reply notice after he



received the legal notice. Without setting up his defence by examining himself as witnesses, he just proceeded to cross examine PW.2 and examined the witness as PW.1 from his side. Mere suggestions put to PW.1 that the cheque is issued only for security and not for validity enforceable debt or liability will not serve as a rebuttal proof.

7. Even if there is no positive evidence on the side of the petitioner, the petitioner could at least establish some improbabilities from the evidence of the complainant himself. The petitioner who had not even chosen to send any reply notice and who had avoided to come to witness box and get himself cross examined had chosen to rely upon the evidence of PW.1 alone. The evidence of PW.1 has been dealt in depth by the trial court and reasons have been recorded vide the evidence of PW.1 which cannot be genuine. DW.1 has stated that the cheque was issued as security for some other transactions. However, in his cross examination he has stated that the cheque was not given during the alleged date when the alleged transaction has taken place.

8. In the absence of any acceptable evidence with regard to the initial presumption, the petitioner cannot claim that he had rebutted the initial



presumption. The respondent had proved the liability of the petitioner by examining himself as a witness and also by producing the impugned cheque itself. So in the absence of any rebuttal proof, the initial presumption becomes a conclusive proof. The learned trial Judge and the Appellate Judge have rightly appreciated the evidence on record and had arrived at a correct conclusion. Hence I do not find any reason to interfere the order of the Courts below.

In the result this Criminal Revision Petition is **dismissed**. The order of the Courts below is upheld. Consequently connected miscellaneous petition are dismissed.

03.02.2023

Index: Yes/No
jrs

To:

1. The I Additional District and Sessions Court,
Salem.
2. The Judicial Magistrate No.III , Salem.



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R.N.MANJULA, J.,

jrs

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