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CrI.R.C.No.1564 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM:

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

CrI.R.C.No.1564 of 2017 and
CrI.M.P.Nos.15775 & 15776 of 2017

A.K.Ismail

... Petitioner /Accused

Vs.

M.Balasubramaniam

... Respondent

PRAYER : Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment in C.A.No.180 of 2017 dated 14.11.2017 on the file of the Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, confirming the sentence imposed in the judgment dated 03.06.2017 in S.T.C.No.577 of 2014 on the file of the Judicial Magistrate (FTC-I), Erode.

For Petitioner : Ms.P.Jeevitha for
Mr.R.Nalliyappan
For Respondent : Ms.R.Vigneshwari,
Legal Aid Counsel

ORDER

This Criminal Revision has been filed to set aside the judgment in C.A.No.180 of 2017 dated 14.11.2017 on the file of the Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode,



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confirming the sentence imposed in the judgment dated 03.06.2017 in S.T.C.No.577 of 2014 on the file of the Judicial Magistrate (FTC-I), Erode.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. The petitioner is the accused against whom the respondent/complainant has filed a private complaint for the offence under Section 138 of the Negotiable Instruments Act and the case was taken on file in STC No.577 of 2014. After the conclusion of the trial, the Trial Judge has found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted the accused to undergo six months simple imprisonment and imposed Rs.4,00,000/- as compensation and in default to pay the compensation, simple imprisonment for a period of one month. The above judgment was challenged by the petitioner in Crl.A.No.180 of 2017 before the learned Additional Sessions Judge, Magalir Neethimandram, Fast Track Mahila Court, Erode. After hearing both sides, the learned Additional Sessions Judge, Magalir Neethimandram, had also dismissed the appeal by confirming the judgment passed in STC No.577 of 2014.



4. The learned counsel for the petitioner submitted that the petitioner never knew the respondent and the impugned cheque was issued by him to one of his friend Pandian; since Pandian had developed some misunderstanding with the petitioner, he had handed over the cheque to the respondent and he had misused the same; the mandatory legal notice was also not served upon the petitioner before filing the complaint.

5. The learned counsel for the respondent submitted that as per Section 138 of the Negotiable Instruments Act, once the signature on the impugned cheque is admitted and the presumption will go in favour of the holder of the cheque; if the petitioner did not rebut the said presumption and with the evidence produced by the respondent, the presumption has become a conclusive proof; the learned Judge has properly appreciated the materials available on record and found the petitioner guilty and hence the said judgment does not require any interference.

6. Even though the petitioner had denied the transaction with the respondent, he did not deny the signature made on the impugned cheque. According to the petitioner, he had issued the impugned cheque to his friend



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by name Pandian. But Pandian had chosen to handover to the respondent herein and he had misused the same.

7. As rightly pointed out by the learned counsel for the respondent that as per Section 138 of Negotiable Instruments Act, once the execution of the cheque is admitted and the initial presumption is made out, it is for the petitioner to rebut the same. The records would show that the petitioner had only examined the Sub-Inspector of Police as D.W.1 and his evidence does not in any way help the petitioner as a rebuttal proof to contradict the initial presumption about the enforceable nature of the consideration involved in the impugned cheque.

8. The legal notice was sent by the respondent after the cheque was bounced for insufficient funds and the notice was also sent to the petitioner's address but it was returned as 'unclaimed'. If the petitioner had chosen not to receive the notice, the respondent cannot help. But after waiting for mandatory grace time, he would file the private complaint in accordance with law. The petitioner has not come out with any acceptable grounds to set aside the judgment of the learned Additional Sessions Judge. Since both the Courts



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below have properly appreciated the materials available on record and rightly applied the law applicable to the case, I find no reason for interference.

9. In the result, this Criminal Revision is dismissed and the judgment passed in C.A.No.180 of 2017 dated 14.11.2017 on the file of the Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, confirming the sentence imposed in the judgment dated 03.06.2017 in S.T.C.No.577 of 2014 on the file of the Judicial Magistrate (FTC-I), Erode, is confirmed. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No
Speaking / Non Speaking Order
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R.N.MANJULA, J.

gsk

To

- 1.The Additional Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Erode.
- 2.The Judicial Magistrate (FTC-I), Erode.
- 3.The Public Prosecutor,
High Court, Madras.

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