IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **20.02.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No.1552 of 2017

M.V.Daniel ... Petitioner

Vs.

C.P.Shanmugasundaram ... Respondent

Criminal Revision Petition is filed under Section 397(1) and 401 of Criminal Procedure Code, to call for the records on the file of the learned III Additional District and Sessions Judge, Coimbatore in Crl.A. No.116 of 2016 dated 06.09.2017 filed confirming the Judgment and Sentence passed in C.C. No.200 of 2013 on the file of the learned Judicial Magistrate Fast Tract Court No.1, Coimbatore dated 23.08.2016 and set aside the same by allowing the above Crl.R.C.

For Petitioner : Mr.R.Bharath 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 06.09.2017 made in Crl.A. No.116 of 2016.

2. The petitioner is the sole accused against whom the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act. As per the case of the respondent the accused had borrowed a sum of Rs.4,00,000/- on 24.05.2012 as a hand loan to meet out his urgent expenses and in order to discharge the same, he issued two cheques bearing cheque numbers No.033974 dated 23.05.2012 for a sum of Rs.1,00,000/- and another cheque bearing No.000053 dated 25.05.2012 for a sum of Rs.3,00,000/- drawn on Kotak Mahindra Bank, Coimbatore. As per the request of the petitioner both the cheque were presented for collection on 25.05.2012 through Tamil Nadu Mercantile Bank. The cheque for a sum of Rs.1,00,000/- was returned with an endorsement “Funds Insufficient' and another cheque for a sum of Rs.3,00,000/- was returned with an endorsement “Payment stopped by the drawer”. After receiving the return memo, the complainant issued a legal notice on 29.05.2016 and the same

was received by the petitioner on 30.05.2016. The petitioner sent a reply notice and the respondent had also sent a rejoinder on 19.06.2012. After complying the legal mandates, the complaint was filed. During trial, on the side of the complainant one witness was examined as P.W.1 and Exs.P1 to P3 were marked. On the side of the accused no witnesses were examined.

3. At the conclusion of the trial the learned trial Judge found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo Simple Imprisonment for a period of six months and to pay compensation for a sum of Rs.4,00,000/- within two months from the date of the judgment. The appeal preferred by the petitioner challenging the order of the trial Judge was also dismissed by confirming the judgment of the trial Court. Now this revision petition has been filed challenging the judgment of the lower appellate Court.

4. The learned counsel for the petitioner submitted that out of the two cheques for which the complaint was filed, one cheque for a sum of Rs.1,00,000/- was dated 23.05.2012; since the respondent himself had stated

that the loan transaction was on 24.05.2012 the cheque bearing dated 23.05.2012 cannot be presumed to be issued for legally enforcible debt or liability; the Courts below without properly analyzing the improbabilities in the case of the respondent, had chosen to find the accused guilty which is not sustainable.

5. The learned counsel for the respondent submitted that the petitioner had taken a different defence by alleging that he had acted as a mediator for a loan obtained by one Ram Kumar from the respondent and during that course he gave his own cheques as security; during trial he had come out with a different stand by stating that the cheque containing the date 23.05.2012 cannot be considered as the cheque issued towards discharge of any legally enforcible debt or liability; in the rejoinder notice sent by the respondent himself he had stated that even though the amount was borrowed on 24.05.2012, the cheque dated 23.05.2012 was very much valid for three months; the respondent accepted the same but however presented it as per the instructions of the petitioner; the learned trial Judge and lower appellate Judge have rightly dealt the probabilities and recorded the guilt of the accused correctly.

6. The specific case of the respondent is that the petitioner had borrowed a sum of Rs.4,00,000/- to meet out his urgent requirements on 24.05.2012 and towards discharge of the same and he gave two cheques for sums of Rs.1,00,000/- and Rs.3,00,000/- respectively bearing dates 23.05.2012 and 25.05.2012, towards discharge of the same. The learned counsel for the petitioner submitted that when the loan itself was said to have been availed by the petitioner on 24.05.2012, the cheque containing the date 23.05.2012 cannot be presumed towards any legally enforcible debt or liability. Even though the cheque for a sum of Rs.1,00,000/- has the date 23.05.2012, as per the submission of the respondent, it was issued to him only on 24.05.2012 when the amount was borrowed. Though the cheque was anti-dated it was still a valid cheque, in view of its validity for three months from the date of its execution. The learned trial Judge and the first appellate Judge have also dealt the above point by stating that the cheques containing the dated 23.05.2012 could have been issued on 24.05.2012 when the amount was borrowed and it is not an impossibility. The respondent has not stated that the cheque dated 23.05.2012 was issued to him on 23.05.2012. Had it been the submission of the respondent, it can be presumed that the debt which was referred in his complaint was not due

at that date. The specific contention of the respondent is that both the cheques bearing the dates 23.05.2012 and 24.05.2012 were issued on the same date when the respondent had availed the loan for a sum of Rs.4,00,000/-.

7. The further submission of the learned counsel for the petitioner is that if the petitioner/accused could have an outstanding of Rs.4,00,000/- as on 24.05.2012, there need not be any necessity for him to borrow the loan for a sum of Rs.4,00,000/- on 24.05.2012.The case of the respondent is that the amount was borrowed by the petitioner as a hand loan and not a short term or long term loan. In such a contingency hand loans are possible even for a day or two depending upon the circumstances of the persons involved. If a person like the petitioner had some urgent necessity and he did not have the money at that moment but there was a possibility to get money within a day or two, it is quite possible for him to go for a hand loan and approach the persons known to him.

8. From the submissions made by the learned counsel for the petitioner, it is seen that the petitioner did not deny the execution of the

cheques but his denial is only with regard to the legal enforceability of the debt borne by the cheques. It is needless to state that as per Section 139 of the Negotiable Instruments Act once the execution of the Negotiable Instrument is not denied, the bearer has got the initial presumption in his favour as to its legally enforcible nature of the debt or liability borne by the cheque. Though it is rebuttable in nature, the burden would shift upon the accused to adduce rebuttal evidence either through positive evidence or from any improbabilities in the case of complainant. In the case on hand, the respondent had not chosen to come to box to examine himself as a witness in order to state his contentions and subject himself for cross-examination. As rightly pointed out by the learned counsel for the respondent that the petitioner had taken up a stand that he stood as a mediator for the loan arranged by him from the respondent to one Ram Kumar. The said fact was not proved in order to disprove the initial presumption that had arisen in favour of the respondent. Hence I do not find any factual or legal infirmity in appreciation of evidence or the recording the guilt of the accused by the Courts below.

9. In view of the above stated reasons, this Criminal Revision Petition is dismissed.

20.02.2023

Index : Yes/No
Speaking Order : Yes / No
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To:

1. The III Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate Fast Tract Court No.1, Coimbatore.

R.N.MANJULA, J.,

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