



Crl.R.C.No.1603 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1603 of 2017

S.Dhanapal
S/o.Sabapathi

... Petitioner/Appellant/Accused

Vs.

P.Suresh Kumar
S/o.Ponnusamy

... Respondent/Respondent/
Complainant

Prayer : Criminal Revision filed u/s.397 r/w 401 of the Code of Criminal Procedure against the judgment passed in Crl.A.No.139 of 2015 on the file of Principal Sessions Judge, Salem, dated 08.11.2017, confirming the order passed in STC No.692 of 2011 by Judicial Magistrate VI, Salem, dated 15.09.2015.

For Petitioner : Mr.P.Anbazhagan

For Respondent : Mr.P.Jagadeesan



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ORDER

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This criminal revision case has been filed against the judgment and order passed by the Principal Sessions Judge, Salem, in Crl.A.No.139 of 2015, dated 08.11.2017, dismissing the appeal and confirming the judgment and order passed by the Judicial Magistrate VI, Salem, in STC No.692 of 2011, dated 15.09.2015, convicting the petitioner for offence u/s.138 of the Negotiable Instruments Act and sentencing him to undergo one year rigorous imprisonment and to pay compensation of Rs.1,20,000/- to the respondent within a period of one month, in default, to undergo three months simple imprisonment.

2. The respondent filed a private complaint against the petitioner on the ground that the petitioner borrowed a sum of Rs.90,000/- on 27.02.2011 for urgent family expenses and promised to repay the same with interest at 2% p.a. Since the petitioner did not pay neither the interest nor the principal, various demands were made by the respondent and ultimately, the petitioner issued the subject cheque dated 27.05.2011 for Rs.94,000/- [Ex.P1]. When this cheque amount was presented for encashment by the respondent, it was



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returned with an endorsement 'funds insufficient' on 08.06.2011. The return memo was marked as Ex.P3. The respondent, thereafter, sent the statutory notice dated 17.06.2011 [Ex.P4] calling upon the petitioner to pay the cheque amount. In spite of receipt of this notice, neither the cheque amount was paid nor any reply was given and hence, it resulted in filing of private complaint against the petitioner for offence u/s.138 of the Negotiable Instruments Act.

3. The trial Court, after considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the legal presumption u/s.139 of the Negotiable Instruments Act must lean in favour of the respondent and that the petitioner failed to rebut the presumption and accordingly, the trial Court convicted and sentenced the petitioner u/s.138 of the Negotiable Instruments Act. This was further confirmed by the appellate Court in C.A.No.139 of 2015. Aggrieved by the same, the present criminal revision case has been filed before this Court.

4. Heard Mr.P.Anbazhagan, learned counsel for petitioner and



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Mr.P.Jagadeesan, learned counsel for respondent.

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5. The main ground that was projected before this Court is that there was no legally enforceable debt and the subject cheque has been misused by the respondent and a false complaint was given against the petitioner.

6. Both the Courts below, on appreciation of evidence, found that there was no dispute with regard to the signature that was found in the cheque. That apart, after the receipt of the statutory notice, the petitioner did not even give a reply and kept quite. The Courts below found that the presumption u/s.139 of the Negotiable Instruments Act must go in favour of the respondent and this finding of the Courts below does not suffer from perversity. All the other technical defence that was taken by the petitioner was also considered and it was rejected by both the Courts below by giving reasons. The said reasonings do not require the interference of this Court since they do not suffer from any perversity.



7. In the light of the above discussion, this Court issues the following directions:

- (a) the petitioner is directed to pay a total compensation of Rs.3,50,000/- [Rupees Three Lakhs and Fifty Thousand only] to the respondent. Out of this amount, the petitioner has already deposited a sum of Rs.30,000/- before the trial Court in compliance of the condition imposed at the time of suspension of sentence. Hence, the balance amount of Rs.3,20,000/- shall be deposited before the trial Court on or before 13.04.2023;
- (b) if the petitioner complies with the direction in clause (a), the offence u/s.138 of the Negotiable Instruments Act shall stand compounded and the conviction and sentence passed by the trial Court and confirmed by the appellate court shall stand set aside.
- (c) if the petitioner complies with the direction issued in clause (a), it is left open to the respondent to file a memo before the trial Court seeking for withdrawal of the total sum of Rs.3,50,000/- and the trial Court shall entertain the memo and permit the respondent to withdraw the amount;



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(d) if the petitioner fails to comply with the direction in clause (a), the petitioner shall surrender before the trial Court on 17.04.2023 and the trial Court shall make the petitioner undergo sentence imposed by the trial Court; and

(e) if the petitioner fails to surrender as directed in clause (d), the trial Court shall take immediate steps to secure the petitioner and make him undergo the sentence imposed by the trial Court.

8. In the result, this Criminal Revision Case is disposed of in the above terms.

Post this case under the caption 'FOR REPORTING COMPLIANCE' on 17.04.2023.

16.03.2023

Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Principal Sessions Judge,
Salem.
- 2.The Judicial Magistrate VI,
Salem.

N. ANAND VENKATESH, J



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