



Crl.R.C.No.560 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.02.2023
Pronounced on	08.03.2023

CORAM:

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

Crl.R.C.No.560 of 2017 and
Crl.M.P.Nos.5002 & 5003 of 2017

M.K.V.Jayavel

... Petitioner / Accused

Vs.

S.Sivakumar

... Respondent / Complainant

PRAYER : This Criminal Revision has been filed under Section 397 r/w.Sec 401 of Cr.P.C., to call for the records pertaining to the judgment and sentence dated 27.02.2017 passed in Crl.A.No.156 of 2016 by the learned XVIII Addl. Sessions Judge, Chennai confirming the judgment and sentence dated 22.04.2016 passed by the learned Metropolitan Magistrate Fast Track Court – I, Lillipond, Chennai – 3 in C.C.No.4771 of 2010, convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for a period of two years and to pay Rs.15,00,000/- being the Cheque amount as compensation under Section 357(3) Cr.P.C. to the respondent in default to undergo simple imprisonment for three months.

For Petitioner : Mr.S.Nambi Rajan

For Respondent : Mr.R.Gowthaman



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ORDER

This Criminal Revision has been filed to call for the records pertaining to the judgment and sentence dated 27.02.2017 passed in Crl.A.No.156 of 2016 by the learned XVIII Addl. Sessions Judge, Chennai confirming the judgment and sentence dated 22.04.2016 passed by the learned Metropolitan Magistrate Fast Track Court – I, Lillipond, Chennai – 3 in C.C.No.4771 of 2010, convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for a period of two years and to pay Rs.15,00,000/- being the Cheque amount as compensation under Section 357(3) Cr.P.C. to the respondent in default to undergo simple imprisonment for three months.

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

3. The respondent has preferred a complaint against the petitioner for the offence under Sections 138 & 142 of Negotiable Instruments Act. It is alleged by the complainant that the petitioner borrowed a sum of Rs.15,00,000/- from him as a loan and executed a promissory note in his favour. In order to re-pay the said amount, the accused has issued a cheque for



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Rs.15,00,000/- dated 26.05.2010 drawn on Indian Bank, Chrompet Branch, Chennai-44. When it was presented for collection on 26.05.2010, the same was returned with an endorsement 'funds insufficient'. Therefore, the respondent sent a legal notice through registered post within the statutory time and the same was returned as 'refused'. However, the copy of the notice sent by him through certificate of posting was received by him and he sent a reply denying the allegations. Subsequently, a complaint has been filed by the respondent for the offence under Sections 138 & 142 of Negotiable Instruments Act.

3.1. During the course of the trial, the complainant examined himself as P.W.1 and on the side of the accused, no witness was examined. However, Exhibit D1 was marked. After concluding the trial, by appreciating the evidence on record, the learned Trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted him to undergo two years simple imprisonment and awarded compensation of Rs.15,00,000/-. Aggrieved over that, the accused preferred an Appeal in Crl.A.No.156 of 2016 and the said Appeal was also dismissed by confirming the judgment of the Trial Court. The present Revision has been preferred



challenging the judgment of the First Appellate Court by stating that the evidence of P.W.1 itself would show that there is no case made out against the petitioner for the offence under Section 138 of Negotiable Instruments Act.

4. The learned counsel for the petitioner submitted that during the examination of respondent / P.W.1, he stated that he had given Rs.1,00,000/- to the petitioner and in the year 2008, he had also given another amount of Rs.2,00,000/- and in between, he had given the other loans; but in the complaint, he has not stated so; even though he has stated that Rs.2,00,000/- was given through cheque, his statement of account does not reveal any such transaction; the respondent did not have any capacity to lend a huge sum of Rs.15,00,000/- to the petitioner; Ex.P1 cheque and Ex.P7 promissory note are said to have been executed in one and the same day; in Ex.P1, the alleged signature of the accused was shown as V.Jayavel and in Ex.P7 promissory note, it is shown as M.K.V.Jayavel, that would show that Ex.P7 is a forged document; the Trial Court and the Appellate Court without considering the same has chosen to find the accused guilty and hence the impugned judgment should be set aside.

5. The learned counsel for the respondent submitted that the petitioner



did not deny his signature on the cheque; when the execution is not denied, the presumption will go in favour of the respondent; in the absence of any rebuttal evidence, the initial presumption on proof of other essential facts would become a conclusive proof; even though the petitioner denied his liability based on the impugned cheque, he did not rebut the same through any rebuttal evidence; so the Court is right in finding the accused guilty and convicting him.

6. The respondent has filed a complaint by stating that he has given a loan of Rs.15,00,000/- on various dates to the petitioner and in discharge of the same, the petitioner had issued the impugned cheque for Rs.15,00,000/-. The learned counsel for the petitioner attracted the attention of this Court to the evidence of P.W.1, wherein he has stated that he had given Rs.1,00,000/- at some point of time and thereafter, he had given Rs.2,00,000/- during the year 2008.

7. In the complaint, the respondent did not state that he had lent a sum of Rs.15,00,000/- in one and the same day. He has given a generalised statement that he had given Rs.15,00,000/- to the petitioner without any break-up details. So the amount of Rs.15,00,000/- has been given on various dates to



the petitioner. The petitioner in his reply notice did not specifically deny the execution of the cheque. But he has stated that his cheque was stolen by someone. But he has not taken any police action by lodging any complaint for the alleged theft of his cheque.

8. The evidence of P.W.1 would reveal that there was some transaction between the petitioner and the respondent in connection with purchase of certain lands. P.W.1 has stated in his evidence that the accused had received the amount on the assurance that he would build a house in his land. Since the accused did not build the house and had also failed to return the money, the respondent was constrained to file the complaint basing on the cheque issued to him.

9. When there is no specific denial about the signature made in Ex.P1 promissory note, the initial presumption would lie in favour of the holder of the cheque that the cheque has been issued towards a legally enforceable debt or liability. Though it is rebuttable in nature, no such evidence is available from the side of the petitioner. The rebuttal evidence need not be always a positive evidence from the petitioner, but it can also be the improbabilities or the



infirmities in the case of the respondent.

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10. The petitioner who had stated that his missing cheque was misused by the respondent, he did not come to the box to substantiate the same and to subject himself for cross examination. Further, he did not give any police complaint that the impugned cheque was missing. When the initial presumption that has already arisen in favour of respondent and when there is no rebuttal proof or circumstances established, the Courts below have rightly appreciated the evidence on record and arrived at a conclusion that the petitioner is guilty for the offence under Section 138 of Negotiable Instruments Act.

11. The petitioner cannot merely state that the respondent did not have the sufficient means to lend the loan of Rs.15,00,000/- but the said fact ought to have been proved through some positive evidence. Mere denial of the wherewithal of the respondent cannot be taken as a proved fact about the means of the respondent. In the absence of any positive evidence, it is right for the Trial Court from refraining to record anything adverse as to the means of the respondent. Hence I do not find any reasons to interfere with the judgment



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of the First Appellate Court except to modify the sentence by reducing the same to some extent.

12. In the result, this Criminal Revision is partly allowed and the judgment of the learned XVIII Additional Sessions Judge, Chennai, dated 27.02.2017 in Crl.A.No.156 of 2016 is modified to the effect that the accused is found guilty and sentenced to undergo a punishment of one year simple imprisonment. In all other aspects with regard to compensation, the judgment of the Courts below is confirmed. Consequently, connected miscellaneous petitions in Crl.M.P.Nos.5002 & 5003 of 2017 are dismissed.

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

08.03.2023

To

1.XVIII Addl. Sessions Judge,
Chennai.



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2.The Metropolitan Magistrate Fast Track Court – I,
Lillipond, Chennai – 3.



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R.N.MANJULA, J

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