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Crl.R.C.No.699 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.699 of 2017

1.M/s.A.P.Thomas
Rep.by its Managing Partner
A.T.Francies
67, Cutchery Street
Erode Town, Erode.

2.A.T.Francies
S/o.A.P.Thomas
Managing Partner
A.P.Thomas
61, Manickavasakar Colony
Karur Bye pass Road
Erode-2.

... Petitioners/Appellants/Respondent

vs.

V.Suresh babu

... Respondent/Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure, to set aside the order of conviction and sentence dated 24.02.2017 in C.A.No.117 of 2016, on the file of the I Additional District & Sessions Judge, Erode confirming the order of conviction and sentence dated 11.05.2016 in S.T.C.No.475 of 2014, on the file of the Judicial Magistrate (Fast Track No.I) Erode.

For Petitioners : Mr.W.Camyles Gandhi

For Respondent : Mr.D.Balachandran



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ORDER

This Civil Revision Case has been filed against the judgment and order passed by the I Additional District and Sessions Judge, Erode in C.A.No.117 of 2016, dated 24.2.2017, dismissing the appeal and confirming the judgment and order passed by the Judicial Magistrate (Fast Track No.I), Erode in STC.No.475 of 2014 dated 11.05.2016, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881 and sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 15 days simple imprisonment.

2.The petitioners are the partners of the Partnership Firm The respondent /complainant filed the private complaint against the petitioners on the ground that the petitioners borrowed a sum of Rs.3,20,000/- on 27.07.2014. To discharge the said liability, a post dated cheque dated 27.08.2014, for a sum of Rs.3,20,000/- was issued in favour of the complainant. When this Cheque was presented for collection, the same was returned with an endorsement "blocked". The respondent issued a statutory notice to the petitioners on 19.09.2014, calling upon the petitioners to pay the cheque amount. In spite of the receipt of the notice, there was neither a reply nor the petitioners settled the cheque amount. In view of the same, private complaint came to be filed against the petitioners for an offence under Section 138 of the Negotiable Instruments Act, 1881 .

3.The Trial Court on considering the facts of the case and on appreciation of the evidence, concluded that the statutory presumption under Section 139 of the



Negotiable Instruments Act, 1881 must go in favour of the respondent and that the petitioners failed to rebut the legal presumption and accordingly, the petitioners were convicted and sentenced for offence under Section 138 of the Negotiable Instruments Act, 1881. The same was confirmed by the Appellate Court and aggrieved by the same, the present Criminal Revision Case has been filed before this Court.

4.Heard Mr.W.Camyles Gandhi, learned counsel for the petitioners and Mr.D.Balachandran, learned counsel for the respondent.

5.The main ground that was urged by the learned counsel for the petitioners is that there was no legally enforceable debt or liability towards which the cheque was issued by the petitioners. It was further submitted that the blank cheque has been misused and it has been filled up by the respondent and the same has not been taken into consideration by both the Courts below.

6.In the considered view of this Court, both the Courts below on appreciating the evidence, came to the conclusion that the petitioners have borrowed a sum of Rs.3,20,000/- and in discharge of the same, have issued the cheque. The Courts below had rightly applied the legal presumption under Section 139 of the Negotiable Instruments Act, 1881 and found that the petitioners have not rebutted the legal presumption. These findings rendered by both the Courts below does not suffer from any perversity and it does not require the interference of this Court. When this court enquired the learned counsel for the respondent as to whether the respondent will



receive the cheque amount and compound the case, the learned counsel fairly submitted that many opportunities were given to the petitioners to settle the amount and in spite of the same, the cheque amount has not been paid. If the cheque amount is paid by the petitioners, the respondent will receive the same and they will leave it to this Court to pass appropriate orders.

7. In the light of the above discussion, this Criminal Revision Case is disposed in the following manner:

(a) The petitioners are directed to deposit the cheque amount of a sum of Rs.3,20,000/- before the Trial Court, on or before **03.04.2023**.

(b) if the cheque amount is deposited as directed in Clause (a), the offence shall stand compounded and the conviction and sentence imposed by both the Courts below shall stand set aside.

(c) If the amount is deposited as directed in Clause (a), it is left open to the respondent to file a memo before the Trial Court and seek for the withdrawal and the Trial Court will permit the respondent to withdraw the amount.

(d) If the petitioners failed to deposit the amount as directed in Clause (a), they shall surrender before the Trial Court on **05.04.2023** and the Trial Court shall confine the petitioners to jail to undergo the sentence imposed by the Trial Court. And ;



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(e) If the petitioners fail to surrender as directed in Clause (d), the Trial Court shall immediately take steps to secure the petitioners and to make them undergo the sentence imposed against him.

8.This Criminal Revision case is disposed of in the above terms.

9.Post this case for reporting compliance on **05.04.2023**.

07.03.2023
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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
KP

To

1. I Additional District & Sessions Judge,
Erode.
2. Judicial Magistrate (Fast Track No.I) Erode.



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N. ANAND VENKATESH, J.

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