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CrI.R.C.No.108 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.03.2023

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.R.C.No.108 of 2020

M.Subramani

.. Petitioner

/versus/

K.Sivakumar

.. Respondent

Prayer : Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.c., praying to call for the records in C.A.No.104 of 2017 on the file of the Sessions Judge of the Nilgiris at Udhagamandalam dated 04.03.2019 confirming the order of the conviction passed by the learned Judicial Magistrate Court, Udhagamandalam, Nilgiris District in S.T.C.No.162 of 2010, dated 07.03.2017 set aside the conviction of 6 months Simple Imprisonment and also to pay compensation of Rs.2,00,000/- in default of payment, further conviction of one month Simple Imprisonment and set the petitioner at liberty .

For Petitioner :No appearance

For Respondent :Mrs.M.Reena for
Mr.J.Bharathiraja



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ORDER

This Criminal Revision Case preferred by the accused, aggrieved by the concurrent finding of the Courts below holding him guilty of offence under Section 138 of the Negotiable Instruments Act, 1881, for issuing a cheque of Rs.2,00,000/- to discharge the liability. Knowing well that he has no sufficient amount to honour the cheque. The trial Court held the revision petitioner guilty and sentenced him to undergo six months SI and pay compensation of Rs.2,00,000/-, in default in payment of compensation, one month SI. Aggrieved by that, the accused preferred an appeal before the Sessions Court, The Nilgiris, Udhagamandalam in Crl.A.No.104 of 2017 and the lower appellate Court has dismissed the appeal on 04.03.2019 by confirming the judgment of the trial Court in S.T.C.No.162 of 2010 dated 07.03.2017.

2. Challenging the concurrent finding of the Courts below, this Criminal Revision Case has been filed along with the petition for suspension of sentence. When it was came up for admission, this Court on 20.02.2020 in Crl.M.P.No.676 of 2020 suspended the sentence on condition that the petitioner/accused shall deposit a sum of Rs.50,000/-



within a period of six weeks, from the date of receipt of a copy of that order.

3. When the matter was taken up for consideration today, the learned counsel appearing for the respondent states that the conditional order was not complied and further, the revision petitioner/accused died, but she is not aware of the date of his demise. In any event, on perusal of the records, this Court finds that the revision petitioner/accused, who was granted suspension of sentence on a specific condition that he should deposit a sum of Rs.50,000/- within a period of six weeks from the date of receipt of a copy of that order, has not complied the said condition.

4. As far as the grounds of the revision is concerned, the contention of the revision petitioner/accused that he has no privity of contract with the complainant and he does not know that the complainant at all has been disbelieved by both the Courts below. For the reason that, on receipt of the statutory notice, the accused has not replied to deny the privity of contract and further more, having admitted the signature in the cheque but taking a defence that the cheque was not given to the complainant but to



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one Govindaraj, who had financial transaction, does not pass the test of preponderance of probability to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881. The reasoning given by the Courts below does not suffer infirmity or illegality to interfere exercising the power under Section 397 of Cr.P.C. For that reason, the Criminal Revision case is liable to be dismissed.

5. Accordingly, this Criminal Revision Case is dismissed.

08.03.2023

Index:yes/no

Speaking order/non speaking order
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To:

- 1.The District & Sessions Judge, The Nilgiris at Udhagamandalam.
- 2.The Judicial Magistrate, Udhagamandalam.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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