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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 16.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.17 of 2019
and
Crl.M.P.(MD)Nos.1067 and 1068 of 2019

S.Sathees Gandhi

... Petitioner/Respondent/Accused

vs.

T.Arun

... Respondent/Appellant/Complainant

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the Judgment passed by the learned Additional District and Sessions Judge, Palani in C.A.No.82 of 2017, dated 30.10.2018 reversing the Judgment passed by the learned Fast Track Court (Magistrate Level), Palani in C.C.No.41 of 2015, dated 10.04.2012 and set aside the same.

For Petitioner : Mr.G.Karuppasamy Pandian

For Respondent : Mr.T.Leninkumar



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ORDER

This revision has been filed as against the Judgment passed by the learned Additional District and Sessions Judge, Palani in C.A.No.82 of 2017, dated 30.10.2018 reversing the Judgment passed by the learned Fast Track Court (Magistrate Level), Palani in C.C.No.41 of 2015, dated 10.04.2012.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of the N.I Act.

3. The crux of the complaint is that on 03.12.2014, the petitioner borrowed a sum of Rs.2,17,000/- from the respondent to start a poultry business. On the date of borrowal itself, he issued a post dated cheque dated 05.01.2015 for the said sum. The said cheque was presented for collection and however, it was returned as dishonored for the reason “funds insufficient”. After issuance of statutory notice, the respondent lodged the complaint.

4. After taking cognizance by the trial Court, the respondent had examined P.W.1 and marked Ex.P.1 to Ex.P.7 and on the side of the



accused, he had examined D.W.1 and D.W.2 and marked Ex.D.1 to Ex.D.5.

5. On perusal of the oral and documentary evidence, the trial Court found the petitioner not guilty and acquitted him of the offence under Section 138 of the N.I. Act. Aggrieved by the same, the petitioner has preferred an appeal in C.A.No.82 of 2017 before learned Additional District and Sessions Judge, Palani in C.A.No.82 of 2017 and the same was allowed on 30.10.2018 and convicted the petitioner for the offence under Section 138 of the N.I. Act and sentenced him to undergo 6 months Simple Imprisonment and to pay the cheque amount of Rs.2,17,000/- as compensation with in a period of two months from the date of Judgment and in default, to undergo one month Simple Imprisonment. Against which, the present revision has been filed.

6. The learned counsel for the petitioner would submit that the respondent has failed to prove the case beyond any doubt in order to punish the petitioner for the offence under Section 138 of the N.I. Act. The trial Court has rightly acquitted the petitioner for the reason that the respondent has failed to prove the case in the manner known to law. Further, the presumption was clearly rebutted by the petitioner by



examining D.W.1 and D.W.2. The respondent had no source of income to lend such a huge sum of Rs.2,17,000/-. Though the respondent has possessed some agricultural lands, he did not even produce any single material evidence to show that he had income from the said agricultural lands. Therefore, the burden of proof was shifted to the respondent and even then, he failed to prove the case beyond any doubt and in accordance with law. Unfortunately, the First Appellate Court, without appreciating the evidence recorded before the trial Court, mechanically had convicted the petitioner. When the trial Court acquitted the petitioner, the Appellate Court cannot normally reverse the findings of the trial Court, unless there is clear cut evidence to convict the accused. In the case on hand, there is absolutely no evidence to convict the petitioner for the offence under Section 138 of the N.I. Act.

7. On perusal of the records, it revealed that the petitioner is an accused in the complaint lodged by the respondent. The specific case of the respondent is that the petitioner had borrowed a sum of Rs.2,17,000/- on 03.12.2014 to start the business of poultry farm and on the same date of borrowal itself, he had issued a post dated cheque for the said sum on 05.01.2015. The said cheque was presented for collection on 05.01.2015. It was returned for the reason “funds insufficient” and the petitioner has



categorically admitted his signature and also issuance of cheque.

Therefore, the respondent had discharged his initial burden as contemplated under Section 138 of the N.I. Act. In order to rebut the presumption, the petitioner had examined D.W.1 and D.W.2. The specific defence of the petitioner is that one of the subscriber of the Chit conducted by the respondent and while receiving the Chit amount, the alleged cheque was handed over as a security. Therefore, the cheque was not issued for any legally enforceable debt. However, it was not substantiated by any iota of evidence by the petitioner herein before the trial Court, instead the petitioner had marked Ex.D.1 to Ex.D.5 and all the documents pertaining to the land owned by the respondent herein. That apart in support of the cheque which was marked as Ex.P.1, the respondent also produced the letter of acknowledgement thereby, acknowledged the loan borrowed by the petitioner, which was marked as Ex.P.2. The trial Court also compared the signature found in the Ex.P.1 and Ex.P.2 as one and the same. Even then, the trial Court had acquitted the petitioner on the ground that the cheque was not issued for legally enforceable debt.

8. Further, the learned counsel for the petitioner vehemently contended that the respondent had no source of income to lend a sum of



Rs.2,17,000/- as loan to the petitioner herein. While that being so, there was no possibility to conduct any Chit by the respondent. In fact, the respondent had categorically admitted that the petitioner possessed agricultural lands and he produced the documents Ex.D.1 to Ex.D.5 to substantiate the same. That apart, the respondent was working as a Teacher for so many years. That apart, the petitioner never questioned about the source of income before the trial Court, even in his reply notice, which was marked as Ex.P.7. At the very first inception itself, the petitioner ought to have rebutted the presumption by questioning the source of income and the petitioner did not even make any statement under Section 313 of Cr.P.C about the source of income by the respondent herein. Therefore, the reply notice, which was marked as Ex.P.7 also do not reveal anything questioning the source of income and the only defence taken by the petitioner is that the cheque was issued for security purpose, during the Chit transaction and the said contention was not proved by the petitioner. Therefore, the First Appellate Court has rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the trial Court. Hence, the Criminal Revision Case is liable to be dismissed.



9. Further, the learned counsel for the petitioner would submit that the petitioner is ready and willing to settle the cheque amount and thereby, this Court may set aside the conviction and sentence imposed by the Court below.

10. Considering the said submission, the conviction imposed by the learned Additional District and Sessions Judge, Palani in C.A.No.82 of 2017, dated 30.10.2018, is confirmed. Insofar as the sentence is concerned, it is modified to compensation of cheque amount, on condition that the petitioner shall deposit the cheque amount of Rs.2,17,000/- (Rupees Two Lakhs and Seventeen Thousand Only) before the learned Fast Track Court, (Magistrate Level), Palani, in C.C.No.41 of 2015, on or before **07.08.2023**. On such deposit, the respondent is permitted to withdraw the same.

11. If the petitioner has failed to deposit the cheque amount, the sentence imposed by the learned Additional District and Sessions Judge, Palani, is hereby restored and the respondent is at liberty to execute the sentence imposed by the learned Additional District and Sessions Judge, Palani, in the manner known to law.



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12. Accordingly, the Criminal Revision Case is partly allowed.

Consequently, connected miscellaneous petitions are dismissed.

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

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To

1.The Additional District and Sessions Judge, Palani.

2.The Fast Track Court (Magistrate Level), Palani.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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