



Crl.R.C(MD) No.221 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.08.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.R.C(MD) No.221 of 2019
and
Crl.M.P(MD) No.3356 of 2019

M.Chenduran

... Petitioner

-Vs-

G.Sahayaraj

... Respondent

PRAYER:- Criminal Revision Petition is filed under section 397 and 401 of Cr.P.C to set aside the judgment in C.A. No.96 of 2017 dated 29.08.2018 on the file of the II Additional District and Sessions Court, Tuticorin confirming the judgment and sentence passed in C.C. NO. 343 of 2012 dated 30.01.2017 on the file of the Fast Track Court, Magisterial level, Tuticorin.

For Petitioner : Mr.Ka.Ramakrishnan

For Respondent : Mr.T.Ponramkumar

ORDER

This Criminal Revision has been filed to set aside the judgment in C.A. No.96 of 2017 dated 29.08.2018 on the file of the II



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Additional District and Sessions Court, Tuticorin confirming the judgment and sentence passed in C.C. No.343 of 2012 dated 30.01.2017 on the file of the Fast Track Court, Magisterial level, Tuticorin.

2. Before the trial Court the respondent filed complaint under Section 138 of the Negotiable Instrument Act and the same was taken on file in C.C. No.343 of 2012. After trial, the trial Court had convicted the accused for the offence under Section 138 of the Negotiable Instrument Act and sentenced to undergo one year simple imprisonment and directed to pay the cheque amount of Rs.2,00,000/- as compensation to the complainant within a period of one month in default to undergo one month simple imprisonment on 30.01.2017. Against which the accused has preferred an appeal before the learned Principal District and Sessions Judge, Thoothukudi and the same was made over to the learned II Additional District and Sessions Judge, Thoothukudi and the learned II Additional District and Sessions Judge, Thoothukudi has dismissed the appeal on 29.08.2018 confirming the judgment of the trial Court.

3. As against the said judgment and conviction, the present revision has been filed on the following grounds:



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a) the trial Court ought to have considered that Ex.P.1 cheque which is typewritten is not a valid instrument under Negotiable Instrument Act.

b) the complainant has not proved the source of income to lend money to the petitioner.

b) Ex.P.3 legal notice is not served to the petitioner. The cheque was not issued in order to discharge the legally enforceable debt, thereby the offence under Section 138 of the Negotiable Instrument Act will not arise.

4. The learned counsel appearing for the petitioner would contend that the respondent has filed a cheque case before the trial Court and the same was taken on file C.C. No.343 of 2012 and then after full trial the trial Court had convicted the accused under Section 138 of the Negotiable Instrument Act and sentenced to undergo one year simple imprisonment and directed to pay the cheque amount of Rs.2,00,000/- as compensation to the complainant within a period of one month in default to undergo one month simple imprisonment. The Courts below failed to consider that the complainant has no source of income to pay the above said cheque amount and in order to prove the



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case the complainant has to adduce sufficient evidence but no documents were produced to prove the source of income of the complainant. The petitioner has not received any legal notice. Cheque was not issued for discharging any legally enforceable debt. These aspects have not been considered by the trial Court and hence the judgment and conviction passed by the Courts below are liable to be set aside by allowing this appeal.

5. The learned counsel appearing for the respondent would contend that the accused have not denied the execution of cheque and the complainant is a fisherman and he is having the capacity to give the cheque amount of Rs.2,00,000/- and the accused admitted the signature in the cheque. In this case the petitioner was examined as P.W.1 and marked Exhibits Ex.p.1 and P.2 and on the side of the defence no one was examined and no document was marked. P.W.1 categorically deposed about the issuance of cheque and presentation for collection, thereby the petitioner has proved the case. Per contra, the accused has not examined any witnesses to rebut the presumption under Section 139 of the Negotiable Instrument Act. Therefore, the revision petition is liable to be dismissed.



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6. Heard both sides and perused the materials available on record.

7. Upon hearing both sides and perusing the judgments of both the Courts and the grounds of appeal, the point for determination in this petition is

i) whether the judgment and conviction passed in C.A. No.96 of 2017 dated 29.08.2018 on the file of the II Additional District and Sessions Court, Tuticorin confirming the judgment and sentence passed in C.C. No.343 of 2012 dated 30.01.2017 on the file of the Fast Track Court, Magisterial level, Tuticorin is sustainable in law and facts.

8. In this case there is no dispute with regard to the issuance of cheque and the accused also admitted the signature found in the cheque. The main contention raised by the petitioner is that the respondent has no means to pay such a huge amount and he has failed to prove his financial capacity. But before the trial Court, while examining the complainant he stated that he is a commission agent in fish business and having sufficient means and mere disputing the source of income of the complainant alone is not sufficient and the trial Court also in the judgement discussed about the same and came



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to the conclusion that the accused had proved his means to pay the above said cheque amount. Further the accused himself admitted his signature and if so he has to prove the contrary. Under Section 139 of the Negotiable Instrument Act the presumption is in favour of the holder of the cheque, but it is a rebuttable presumption. In order to rebut the presumption no any document adduced by the petitioner.

9. Another contention raised by the petitioner is that cheque was not issued for legally enforceable debt . In this context P.W.1 stated that the accused borrowed a sum of Rs.2,00,000/- from him on 21.03.2010 and then on the same day, he had executed pronote. Thereafter on demand of the respondent the accused has issued cheque drawn on Syndicate Bank bearing No. 489297 dated 14.06.2012. Therefore from the evidence of P.W.1 it reveals that the cheque was issued for the loan obtained by the petitioner from the respondent. As far as the ground the cheque was typewritten is concerned no legal bar to type in the cheque. The trial Court as well as the appellate court elaborately discussed about the evidence adduced on either side and correctly applied the legal proposition of law and hold that the complainant has not proved his case with sufficient evidence, thereby there is no any infirmity found on the judgements of the Courts below. Hence this Court has no warrant to



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interfere with the judgments of Courts below. Therefore the grounds raised by the petitioner in this petition has no merits and deserves to be dismissed.

10. Accordingly this Criminal Revision stands dismissed and the judgment and conviction passed in C.A. No.96 of 2017 dated 29.08.2018 on the file of the II Additional District and Sessions Court, Tuticorin confirming the judgment and sentence passed in C.C. NO. 343 of 2012 dated 30.01.2017 on the file of the Fast Track Court, Magisterial level, Tuticorin are hereby confirmed. The trial Court is directed to take steps to secure the accused and proceed in accordance with law.

25.08.2023

Index : Yes/No
Internet : Yes/No
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To

1. The II Additional District and Sessions Court, Tuticorin
2. The Judicial Magistrate,
Fast Track Court, Magisterial level, Tuticorin



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P.DHANABAL, J.

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