



Crl.R.C.(MD)No.40 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.40 of 2019
and
CrI.M.P.(MD)No.1268 of 2019

Sivakumar

... Petitioner/ Appellant / Accused
vs.

Kannan

... Respondent/Respondent/Complaint

PRAYER : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records from the courts below and set aside the conviction and sentence passed by the learned 1st Additional District Sessions Judge, Thoothukudi in C.A.No.14 of 2017 dated 29.10.2018 confirmed the judgment in C.C.No.336 of 2014 passed by the Fast Track Court (Magistrate Level), Thoothukudi, dated 30.01.2017.

For Petitioner : Mr.G.Radhakrishnan
For Respondent : Mr.KA.Ramakrishnan

ORDER

This Criminal Revision Petition has been filed to set aside the conviction and sentence passed by the learned 1st Additional District



Crl.R.C.(MD)No.40 of 2019

WEB COPY

Sessions Judge, Thoothukudi in C.A.No.14 of 2017, dated 29.10.2018 confirming the judgment in C.C.No.336 of 2014 passed by the Fast Track Court (Magistrate Level), Thoothukudi, dated 30.01.2017.

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

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.1,00,000/- on 27.12.2003 from the respondent for his urgent family needs with promise to repay the same within a period of one month. When the respondent demanded the above said loan, the petitioner issued a cheque for the said sum. It was presented for collection. However, it was returned dishonored for the reason 'funds insufficient'. After causing statutory notice, the respondent lodged a complaint.

4.On the side of the respondent, he had examined P.W.1 and marked Ex.P.1 to Ex.P.6. On the side of the petitioner, no one was examined and no documents were produced.



Crl.R.C.(MD)No.40 of 2019

WEB COPY

5.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and to pay the cheque amount of Rs.1,00,000/- as compensation. Aggrieved by the same, the petitioner has preferred an appeal in C.A.No.14 of 2017 before the learned 1st Additional District Sessions Judge, Thoothukudi and the Appellate Court also dismissed the same, confirming the order of conviction and sentence imposed by the trial Court. Hence, the present revision.

6.The petitioner raised grounds that the respondent has failed to prove his case beyond any doubt. The cheque was not issued for any legally enforceable debt. The respondent is being the financier claimed exorbitant interest and even after returning the entire loan amount, the respondent failed to return the cheque. Subsequently, it was misused by him by presentation. Therefore, the petitioner never had any liability to issue any cheque.

7.On perusal of the entire records revealed that after disclosing the



Crl.R.C.(MD)No.40 of 2019

cheque, the respondent issued statutory notice and the same was duly received by the petitioner. However, the petitioner failed to reply in order to rebut the initial presumption. Further, the petitioner also admitted his signature and issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. Though the petitioner can very well rebut the presumption, the petitioner has failed to rebut the same by probable defence. In fact, the petitioner has failed to issue any reply notice and did not even examine anybody and failed to produce any iota of evidence to substantiate the grounds raised herein. That apart, after concurrent findings of the Courts below, the petitioner did not even move his application for suspension of sentence sofar. Therefore, this Court finds no infirmity or illegality in the order passed by the Courts below.

8. Accordingly, this Criminal Revision Case is dismissed.
Consequently, connected miscellaneous petition is closed.

27.06.2023

sjj
NCC : Yes/No



Crl.R.C.(MD)No.40 of 2019

Index: Yes/No

Internet: Yes/No

To

- 1.The 1st Additional District Sessions Judge, Thoothukudi.
- 2.The Fast Track Court (Magistrate Level), Thoothukudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C.(MD)No.40 of 2019

G.K.ILANTHIRAIYAN , J.

sjj

Crl.R.C.(MD)No.40 of 2019

27.06.2023