BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.211 of 2018

K.Sathasivam ... Petitioner

Vs.

C.Kumarasamy ... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order passed in C.A.No.28 of 2017 dated 14.6.2017 on the file of the Additional District Judge, Karur in S.T.C.No.481 of 2011 dated 13.02.2015 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial level), Karur and to set aside the same.

For Petitioner : Mr.N.Shanmugaselvam

For Respondent : Mr.V.Balaji

ORDER

This Criminal Revision Case has been filed to set aside the order passed in C.A.No.28 of 2017 dated 14.6.2017 on the file of the Additional District Judge, Karur in S.T.C.No.481 of 2011 dated 13.02.2015 on the file of the learned Judicial Magistrate (Fast Track Court at Magisterial level), Karur.

2.The petitioner is the complainant and the respondent is the accused in the complaint initiated by the petitioner under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that on 15.07.2010, the respondent borrowed a sum of Rs.15,00,000/- for his urgent needs and business develop and he executed pro-note. He also agreed to repay interest at the rate Rs.1.25 per Rs.100/-. However, the respondent failed to pay the amount towards principal or interest. Inspite of repeated demand, the respondent issued three cheques and all the cheques were presented for collection and the same were returned dishonoured for the reason that "account closed". After issuing statutory notice, the petitioner preferred the complaint. In order to prove the case, the petitioner had examined P.W.1 to P.W.3 and marked Ex.P.1 to Ex.P.11. On the side of the respondent, he examined D.W.1 to D.W.3 and marked Ex.D.1 to Ex.D.11 and also marked witness document as Ex.Y.1 to Ex.Y.5.

4.On perusal of oral and documentary evidence, the trial Court found the petitioner not guilty and dismissed the complaint. Aggrieved over the same, the petitioner preferred an appeal and the same was also dismissed by confirming the order passed by the trial Court. Hence, the present revision.

5.The learned counsel appearing for the petitioner would submit that the respondent now filed a suit as against one A.M.Krishnamoorthy for recovery of money. In the said suit, the respondent categorically admitted that he received amount from the petitioner herein. Therefore, he sought for remand the matter to the trial Court.

6.On perusal of records revealed that revealed that the respondent herein had categorically rebutted the presumption as contemplated under

Section 139 of the Negotiable Instruments Act by examining D.W.1 to D.W.3 and by marking Ex.D.1 to Ex.D.11 and also by marking witness document as Ex.Y.1 to Ex.Y.5. In fact, the respondent produced application for financial assistance under "V-Trade" submitted to Vijaya Bank. Therefore, the respondent proved that he never borrowed loan from the petitioner and never executed any pro-note and there was no legally enforceable debt. That apart, in the year 2006, the respondent borrowed a sum of Rs.4 Lakhs from the petitioner herein. However, he was not able to pay interest and principal amount. The petitioner also demanded penal interest.

7.At that juncture, the petitioner obtained 10 signed cheques and 10 signed promissory notes from the respondent. Thereafter, the respondent borrowed loan from the Bank. The friend of the petitioner one A.M.Krishnamoorthy informed the respondent that he would get loan from Vijaya Bank. Thereafter, the said A.M.Krishnamoorty had taken the respondent and his parents to Bank. It was agreed that the properties of the respondent's parents shall be mortgaged and that the loan amount shall be deposited to the said A.M.Krishnamorrthy. In turn, the said A.M.Krishnamoorthy shall pay the debts to the petitioner from the mortgage loan amount. Accordingly, properties were mortgaged with Vijaya Bank and credited loan amount in favour of the said A.M.Krishnamoorthy. In turn, the said A.M.Krishnamoorthy paid the entire loan to the petitioner herein. When the respondent insisted to return the cheques and pro-notes, which were obtained from him, the petitioner assured that he would return the same, after tracing out. Thereafter, the cheques were misused by the petitioner and initiated the present complaint. Therefore, the respondent categorically rebutted the presumption as contemplate under Section 139 of the Negotiable Instruments Act and both the Courts below rightly acquitted the respondent and this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this criminal revision case is dismissed. However, the petitioner is at liberty to implead himself in the suit filed by the respondent, in the manner known to law.

14.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.K.ILANTHIRAIYAN,J.

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To

1.The Additional District Judge,
Karur.

2.The Judicial Magistrate (Fast Track Court at Magisterial level),
Karur.

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