



Crl.R.C(MD)No.213 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.213 of 2018

and

Crl.M.P(MD)Nos.2860 & 2861 of 2018

Dhandapani

... Petitioner/
Appellant/Accused

Vs.

M.Kumaravel

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence passed in C.A.No.130 of 2017 on the file of the District and Sessions Court, Karur, dated 09.01.2018, confirming the conviction and sentence passed in C.C.No.619 of 2014 on the file of the Fast Track Court (Judicial Magistrate Level), Karur, dated 23.08.2017.

For Petitioner : Mr.AN.Ramanathan

For Respondent : Mr.K.Suresh



Crl.R.C(MD)No.213 of 2018

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ORDER

This revision has been filed to set aside the Judgment made in C.A.No.130 of 2017 on the file of the District and Sessions Court, Karur, dated 09.01.2018, confirming the conviction and sentence made in C.C.No.619 of 2014 on the file of the Fast Track Court (Judicial Magistrate Level), Karur, dated 23.08.2017.

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 on 22.06.2014, the petitioner borrowed a sum of Rs.12,00,000/- for his urgent needs and also business purposes from the respondent. On the date of borrowal itself, he had executed a pro-note in favour of the respondent and also agreed to repay the said amount with interest at the rate of Rs.1.50 paise per Rs.100/- per month. However, the petitioner failed to pay any amount either towards principal or towards interest. On repeated request and demand, the petitioner had issued three post-dated cheques in favour of the respondent



Crl.R.C(MD)No.213 of 2018

and two cheques were issued for a sum of Rs.5,00,000/- each and one cheque was issued for a sum of Rs.2,00,000/-. All the cheques were presented for collection on 08.09.2014. All the cheques were returned dishonoured for the reason "funds insufficient". Hence, the respondent caused statutory notice. On receipt of the same, the petitioner neither send any reply nor settled the cheque amount. Hence, the complaint.

4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.9 and on the side of the petitioner, he himself was examined D.W.1 and marked Exs.D.1 to D.5.

5.On perusal of the oral and documentary evidence, the trial court found the accused 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 a fine of Rs. 5,000/-, in default, to undergo 30 days Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.130 of 2017 on the file of the District and Sessions Court, Karur. The appellate Court also dismissed the appeal and confirmed



Crl.R.C(MD)No.213 of 2018

the conviction and sentence imposed by the trial court. Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that the cheque was not issued any legally enforceable debt. The respondent is a stranger to the petitioner and the petitioner never borrowed any loan as alleged in the complaint. That apart, the cheque was issued on behalf of V-Wind Mills that too in favour of the respondent. The cheque was misused by the respondent and initiated the proceedings under Section 138 of the Negotiable Instruments Act. Further, in the notice as well as the complaint, the petitioner name was mentioned as Dhandapani, but his name is Dhandayuthapani. Therefore, without even knowing the name of the petitioner, the respondent had lent such a huge amount is an unbelievable one. Therefore, without considering the above facts and circumstances both the Courts below wrongly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

7.On perusal of the records revealed that though the petitioner contended his name as Dhandayuthapani, he ought not to



Crl.R.C(MD)No.213 of 2018

have received the notice and signed in the acknowledgment card and the acknowledgment card was marked as Ex.P.9. That apart, the petitioner executed pro-note which was marked as Ex.P.1 and all the cheques were marked as Ex.P.2 to Ex.P.4. In fact, the petitioner failed to appear before the trial Court and as such, Non-Bailable Warrant was issued as against the petitioner. In order to re-call the Non-Bailable Warrant, the petitioner filed a petition, in which, he stated his name as Dhandapani. He had never taken a stand that his name is Dhandayuthapani before the trial Court.

8.The petitioner had taken a further stand that he borrowed loan from Vidhya Associates. At the time of borrowal of loan, the petitioner had given cheques and pro-notes for security purposes. Even after repaid the entire loan amount, the said Vidhya Associates failed to return the cheques and pro-notes which were handed over as security. However, in order to substantiate the same, the petitioner did not even produce any material evidence to show that he borrowed the loan from Vidhya Associates and had given the cheques and pro-notes for security purposes. Even after, the petitioner did not take any steps to get back their pro-notes and cheques. In fact, even after receipt of the statutory notice, the



Crl.R.C(MD)No.213 of 2018

petitioner failed to take any steps to lodge even complaint or any other proceedings as against the said Vidhya Associates. The petitioner never denied the signature in the pro-notes and the cheques. Therefore, it construed that he issued pro-notes and cheques for the loan borrowed by him.

9.Further, the petitioner marked Ex.D.1/the F.I.R, which was registered in Crime No.12 of 2010. Accordingly, their company called Vinfab was completely burnt in a fire accident in the year 2010 itself. Thereafter, the registration certificate of the said company was also cancelled in the year 2012. When it was being so, there could not be any cheques issued by the said company. On perusal of the records revealed that the cheques were issued in the capacity of the petitioner of Proprietor of V-wind Mills. Those cheques and pro-notes were not issued in the name of V-wind Mills. Therefore, the respondent categorically discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. That apart, even till today, the petitioner's sentence is not yet suspended. Unfortunately, the



Crl.R.C(MD)No.213 of 2018

respondent also did not take any steps to execute the order of sentence imposed by the Courts below. Hence, this Court finds no infirmity or illegality in the order passed by the Courts below.

10. Accordingly, this Criminal Revision Case is dismissed.

The trial Court is directed to take steps to secure the petitioner/accused to serve the remaining period of sentence.

Consequently, connected Miscellaneous Petitions are closed.

25.04.2023
(1/3)

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

1. The Additional District and Sessions Court,
Palani.

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



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Crl.R.C(MD)No.213 of 2018

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.213 of 2018

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(1/3)