



Crl.R.C(MD)No.214 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.214 of 2018

and

Crl.M.P(MD)Nos.2862 & 2863 of 2018

Saravanan

... 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.131 of 2017 on the file of the District and Sessions Court, Karur, dated 10.01.2018, confirming the conviction and sentence passed in C.C.No.618 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



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ORDER

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This revision has been filed to set aside the Judgment made in C.A.No.131 of 2017 on the file of the District and Sessions Court, Karur, dated 10.01.2018, confirming the conviction and sentence made in C.C.No.618 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 10.08.2014, the petitioner borrowed a sum of Rs.1,80,000/- for his family expenses from the respondent. On the date of borrowal itself, the petitioner had issued two post-dated cheques in favour of the respondent and both cheques were issued for a sum of Rs.1,05,000/- and Rs. 75,000/- respectively. Both the cheques were presented for collection on 28.08.2014 and the same was returned dishonoured for the reason "funds insufficient". After causing statutory notice, the respondent lodged the complaint.



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4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.6 and on the side of the petitioner, D.W.1 and D.W.2 were marked and marked Exs.D.1 to D.4.

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 five months Simple Imprisonment and to pay a fine of Rs. 3,000/-, in default, to undergo 30 days Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.131 of 2017 on the file of the District and Sessions Court, Karur. The appellate Court also dismissed the appeal and confirmed 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 respondent was known to him as LIC Agent and joined the LIC and took LIC policy by paying the premium by way of



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giving cheques to the respondent as LIC agent. The said cheques were issued in the year 2009 and 2011 and the same was misused by the respondent and filed the present complaint. No notice was received by the petitioner and hence, mandatory provisions under Section 138(b) of the Negotiable Instruments Act was not fulfilled.

7.The petitioner had taken a stand that no notice was sent to the petitioner. On perusal of records revealed that the legal notice sent by the respondent was marked as Ex.P.5 and the acknowledgment card was marked as Ex.P.6. Though statutory notice was sent to the petitioner, the same was received and signed by another person. Hence, Ex.P.6 notice has been sent to the correct address of the petitioner. The trial Court had issued summons to the petitioner to the same address. On receipt of the said summons, the petitioner appeared before the trial Court. Hence, the contention of the petitioner that mandatory provisions under Section 138(b) of the Negotiable Instruments Act were not fulfilled is not acceptable.



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8.Further, the petitioner had taken a stand that the cheque was not issued for any legally enforceable debt. During the cross-examination, the respondent admitted that he is LIC agent and the petitioner had taken the policy and for paying premium, D.D. has to be taken in the name of L.I.C and not in the respondent's name. Further, the premium amount of L.I.C is known and the contention of the petitioner that he had issued the cheque without filing the amount is not acceptable. 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 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.



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9. 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.

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(2/3)

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

To

1. The District and Sessions Court,
Karur.

2. The Fast Track Court (Judicial Magistrate Level),
Karur.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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