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Crl.R.C(MD)No.230 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**Crl.R.C(MD)No.230 of 2018
and Crl.M.P(MD)No.2981 of 2018**

Dhanapaul

... Petitioner/
Appellant/Accused

Vs.

R.Jayachandran

... Respondent/
Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in C.A.No.47 of 2016 on the file of the I-Additional District and Sessions Court, Thoothukudi, dated 11.10.2017 confirming the conviction and sentence of one year Simple Imprisonment and direction to pay compensation of Rs.1,53,000/- under Section 357 of Cr.P.C r/w 117 of the Negotiable Instruments Act within one month from the date of the Judgment in default to undergo one month Simple Imprisonment imposed by the Judgment dated 08.09.2016 in C.C.No.259 of 2014 on the file of the Fast Track Court at Magisterial Level, Thoothukudi and set aside the same and acquit the accused.

For Petitioner : Mr.M.M.Manivel Pandian

For Respondent : Mr.S.C.Herold Singh



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ORDER

This revision has been filed to set aside the order passed in C.A.No.47 of 2016, dated 11.10.2017, on the file of the I-Additional District and Sessions Court, Thoothukudi, confirming the Judgment passed in C.C.No.259 of 2014, dated 08.09.2016, on the file of the Fast Track Court at Magisterial Level, Thoothukudi.

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 had borrowed a sum of Rs.1,53,000/- as a hand loan from the respondent in the month of June 2014 to meet out his urgent needs and family expenses and also promised to repay the loan amount within one month. However, he did not repay the same and on repeated demands, the petitioner issued a cheque for the said amount. The cheque was presented for collection, and it was returned 'dishonoured' for the reason that the 'funds insufficient'. Immediately, the respondent caused statutory notice and lodged the complaint.



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4.On the side of the respondent, he himself was examined as P.W.1 and one Vickraman was examined as P.W.2 and marked Exs.P.1 to P.6 and on the side of the petitioner, no one was examined and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found him guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and also ordered compensation to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.47 of 2016 on the file of the I-Additional District and Sessions Court, Thoothukudi and the same was also dismissed confirming the conviction and sentence imposed by the trial Court. Hence, the present Revision.

6.The learned counsel appearing for the petitioner would submit that while suspending the sentence, this Court, by order, dated 16.04.2018, directed the petitioner to deposit a sum of Rs.75,000/- to the credit of the trial Court. Accordingly, the petitioner deposited the said sum of Rs.75,000/- before the trial Court on 26.04.2018. The learned counsel appearing for the



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petitioner now sought further time in order to repay the remaining cheque amount.

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7. On perusal of the records revealed that the petitioner borrowed a sum of Rs.1,53,000/- from the respondent and in order to repay the same, he issued a cheque. It was marked as Ex.P.1. It was presented for collection and the same was returned dishonoured for the reason that the 'funds insufficient'. Hence, the respondent caused statutory notice, which was marked as Ex.P.3. It was duly received by the petitioner by acknowledgement card, which was marked as Ex.P.4. On receipt of the statutory notice, the petitioner failed to send any reply nor rebut the presumption arising out of Section 139 of the Negotiable Instruments Act. Therefore, the respondent discharged his initial burden and proved his case. The petitioner also did not deny the signature found in the cheque and issuance of the cheque. Therefore, the execution of Ex.P.1 when admitted by the petitioner, then the respondent is entitled to draw the presumption under Section 118 of the Negotiable Instruments Act and it is for the petitioner to rebut the same.



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8.In the case on hand, the petitioner failed to rebut the presumption and as such, the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. However, the petitioner is now ready and willing to pay the remaining cheque amount.

9.Considering the above facts and circumstances, the conviction imposed by the Courts below for the offence punishable under Section 138 of the Negotiable Instruments Act is hereby confirmed and in so far as the sentence is concerned, it is set aside on condition that the petitioner shall deposit the remaining cheque amount, namely Rs.78,000/- (Rupees Seventy Eight Thousand Only) to the credit of C.C.No.259 of 2014 on the file of the Fast Track Court at Magisterial Level, Thoothukudi, on or before 27.04.2023. If the petitioner fails to deposit the remaining cheque amount, the sentence imposed by the Courts below is hereby restored without any further reference to this Court and the trial Court is directed to take appropriate steps to secure the petitioner in order to serve out the remaining period of sentence. On such deposit, the respondent is permitted to withdraw the entire amount by way of filing an application.



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10.This Criminal Revision Case is disposed of, with the above direction. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The I-Additional District and Sessions Court,
Thoothukudi.
- 2.The Fast Track Court at Magisterial Level,
Thoothukudi.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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