



Crl.R.C(MD)No.245 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.245 of 2018
and
Crl.M.P(MD)No.3240 of 2018**

Bharathkannan,
S/o.Badra,
Old NO.31, New No.1,
Big Bazar Street,
Palani,
Dindigul District.

... Petitioner/
Appellant/Sole Accused

Vs.

T.Seenivasan

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, against the Judgment and conviction made in C.A.No.67 of 2017 on the file of the Additional District and Sessions Judge, Palani, dated 04.01.2018, confirming the Judgment made in C.C.No.78 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Palani, dated 08.06.2017.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.S.C.Herold Singh



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ORDER

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This revision has been filed to set aside the Judgment made in C.A.No.67 of 2017 on the file of the Additional District and Sessions Judge, Palani, dated 04.01.2018, confirming the Judgment made in C.C.No.78 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court), Palani, dated 08.06.2017.

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.17,00,000/- for his business purposes from the respondent on 21.03.2015. In order to repay the said amount, the petitioner issued a cheque for the said sum on 18.05.2015. It was presented for collection 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 also marked Exs.P.1 to P.17 and on the side of the petitioner, he himself was examined D.W.1 and no documents were marked.

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 six months Simple Imprisonment and to pay a fine of Rs.4,000/-, in default, to undergo one month Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.67 of 2017 on the file of the Additional District and Sessions Judge, Palani. The appellate Court also dismissed the appeal and confirmed the conviction and sentence imposed by the trial court. Hence, the present revision.



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6.The learned counsel appearing for the petitioner would submit that he had no instructions from the petitioner and reported 'no instructions'. Therefore, he is withdrawing his appearance on behalf of the petitioner. Even then, the petitioner did not engage any new counsel and failed to appear before this Court either by person or through Pleader.

7.However, while suspending the sentence, this Court, by order dated 24.04.2018 imposed a condition that the petitioner shall deposit a sum of Rs.5,00,000/- to the credit of the trial Court. However, the petitioner failed to comply with the same and as such, this Court, by an order, dated 02.08.2018, revoked the sentence and directed the trial Court to secure the petitioner to make him undergo the balance period of sentence in accordance with law.

8.On perusal of the records revealed that the respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act. Though the petitioner had taken a specific stand that the cheque was not issued for any legally enforceable debt, it was issued for security purposes at the time of borrowal of loan by his mother, however, in order to



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substantiate the same, the petitioner failed to produce any material on record. Further, the petitioner admitted the signature of the cheque and issuance of the cheque. Another stand taken by the petitioner was that the respondent had no source of funds in order to lend such a huge amount. However, in order to substantiate the same, the petitioner failed to rebut the initial presumption by reply notice. That apart, the petitioner also failed to make any statement under Section 313 of Cr.P.C Therefore, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. This Court finds no infirmity or illegality in the order passed by the Courts below.

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 Petition is closed.

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

- 1.The Additional District and Sessions Court,
Palani.
- 2.The Judicial Magistrate (Fast Track Court),
Palani.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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