



Crl.R.C.(MD)No.264 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2023

CORAM

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

Crl.R.C.(MD)No.264 of 2018

Dhas

... Petitioner

Vs.

1.Christu Raj

2.State of Tamil Nadu Rep.by
Special Public Prosecutor,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the judgment dated 01.02.2018 in C.A.No.56 of 2008 on the file of the Mahila Fast Track Court, Kanyakumari District at Nagercoil confirming the judgment and conviction made in the judgment dated 04.04.2008 in S.T.C.No.3348 of 2005, on the file of the Principal District Munsif Cum Judicial Magistrate Court, at Eraniel and accordingly, this criminal revision petition be allowed and the petitioner be acquitted.

For Petitioner : Mr.S.Vashik Ali

For R1 : Mr.KA.Ramakrishnan



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For R2

: Mr.M.Vaikkam Karunanithi,
Government Advocate(Crl.side)

ORDER

This Criminal Revision Case has been filed to set aside the judgment dated 01.02.2018 in C.A.No.56 of 2008 on the file of the Mahila Fast Track Court, Kanyakumari District at Nagercoil confirming the judgment and conviction made in the judgment dated 04.04.2008 in S.T.C.No.3348 of 2005, on the file of the Principal District Munsif Cum Judicial Magistrate Court, at Eraniel.

2.The petitioner is an accused in the complaint lodged by the first respondent under Section 138 of the Negotiable Instruments Act. The crux of the complaint is that on 20.07.2005, the petitioner had purchased timber from the first respondent to the tune of Rs.6,00,700/-. In order to pay the sale consideration, the petitioner had issued post dated cheque i.e., 25.07.2005 in favour of the first respondent. It was presented for collection and the same was returned for the reason that “Exceeds Arrangement”. After causing statutory notice, the first respondent lodged complaint.



3.On the side of the first respondent, he examined himself as P.W.

1 and marked Ex.P.1 to Ex.P.6. On the side of the accused no one was examined and no document was marked. On perusal of 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 three months simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo three weeks simple imprisonment. Aggrieved over the same, the petitioner preferred an appeal and the same was also dismissed by confirming the judgment passed by the trial Court. Hence, the present revision.

4.The learned counsel appearing for the petitioner would submit that the first respondent failed to discharge his initial burden as required under Section 138 of NI Act. The Specific case of the first respondent is that the petitioner had purchased timber on 20.07.2005 to the tune of Rs.Rs.6,00,700/-. In order to prove the same, the first respondent did not even produce any material before the trial Court, such as commercial tax details, placement of orders, supply of timber. Except cheque, no other document produced by the first respondent in support of his case. He



would further submit that the first respondent failed to prove that he had financial capacity in order to supply goods and he also failed to produce any document to show that he is running timber shop. That apart, on receipt of statutory notice, the petitioner caused reply notice. In the reply notice, he categorically denied the transaction alleged in the complaint. He had other business transaction with the first respondent and by utilizing the said circumstances, the first respondent forged the signature of the petitioner and presented the cheque for collection. That apart, the cheque was returned dishonoured for the reason that “Exceeds Arrangement” and as such, it would not attract offence under Section 138 of NI Act. He would also submit that the petitioner borrowed a sum of Rs.1,65,000/- from the respondent and at the time of borrowal, cheque was issued for security purpose and thereby, he repaid the entire amount. Even thereafter, the first respondent failed to return the cheque leaves, which was given as security and one of the cheque was presented for collection and initiated proceedings under Section 138 of NI Act. Therefore, the petitioner categorically rebutted the presumption arising out of Section 138 of NI Act. Therefore, both the Courts below ought not to have convicted the petitioner and prayed for acquittal.



5.The learned counsel appearing for the first respondent would submit that the first respondent discharged his initial burden as contemplated under Section 138 of NI Act. The petitioner never denied the signature and issuance of cheque in favour of the first respondent herein. The cheque was returned dishonoured for the reason that “Exceed arrangement”, which is equivalent to “funds insufficient”. The cheque was drawn for a sum of Rs.6,00,700/-, whereas amount was available below cheque amount. Therefore, it was returned with an endorsement “Exceed Arrangement”. Therefore, the petitioner is liable to be punished for the offence punishable under Section 138 of NI Act and both the Courts below rightly convicted and sentenced him and it does not warrant any interference by this Court.

6.Heard both sides and perused the materials available in the record.

7.The first respondent supplied timber in favour of the petitioner and in turn, the petitioner issued post dated cheque in favour of the first respondent. The said cheque was presented for collection. However, it



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was returned dishonoured for the reason that “Exceed Arrangement”. The respondent caused statutory notice as contemplated under Section 138 of NI Act. On receipt of the same, the petitioner issued reply notice on 08.08.2005. The cheque was marked as Ex.P.1. The Bank memo was marked as Ex.P.2. Legal notice was marked as Ex.P.4 and the reply notice was marked Ex.P.6.

8.Though the petitioner denied business transaction, he categorically admitted that he owes to the tune of Rs.1,65,000/- in favour of the respondent. Even after repayment of the entire amount, the first respondent failed to return the cheque which was given as security purpose, at the time of borrowal of tha amount. Therefore, there was transaction between the petitioner and the first respondent, in which, the cheque was issued in favour of the first respondent. That apart, the petitioner did not even mention the date of borrowal and repayment of the loan amount. Even assuming that the respondent failed to return the cheque, the petitioner did not take any steps to return the cheque back from the first respondent. In fact, even after sending reply notice, the petitioner did not take any steps to get back his cheque which was



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allegedly issued for security purpose.

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9.Further, the petitioner did not deny the signature and issuance of cheque in favour of the first respondent. It was presented for collection and the same was returned dishonoured for the reason that “Exceed Arrangement”. Therefore, the first respondent discharged his initial burden in order to prove his case as contemplated under Section 138 of NI Act. However, it is rebuttable in nature. Though the petitioner sent reply notice stating that there was no business transaction between the petitioner and the first respondent, in order to substantiate the same, the petitioner did not even produce any material to show that there was no business transaction and he was not examined any witnesses to substantiate his contention. Therefore, both the Courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below. Accordingly, this criminal revision case is dismissed.

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NCC : Yes / No
Index : Yes / No

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

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To

- 1.The Mahila Fast Track Court, Kanyakumari District
at Nagercoil
- 2.The Principal District Munsif Cum Judicial Magistrate Court,
at Eraniel
- 3.The Special Public Prosecutor,
Nagercoil,
Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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