



Crl.R.C(MD)No.332 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.332 of 2018

K.R.Subramanian

... Petitioner/
Appellant/Complainant

Vs.

G.Murugan

... Respondent/
Respondent/Accused

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 & 482 of the Code of Criminal Procedure, to call for the records in Crl.A.No.13 of 2017 on the file of the Additional District and Sessions Court, Theni, dated 30.10.2017, in S.T.C.No.187 of 2011 on the file of the Judicial Magistrate, Theni, dated 10.03.2014.

For Petitioner

: Mrs.Seeni Syed Amma
for M/s.T.Lajapathi Roy and Associates



Crl.R.C(MD)No.332 of 2018

WEB COPY

ORDER

This revision has been filed to set aside the order passed in Crl.A.No.13 of 2017 on the file of the learned Additional District and Sessions Judge, Theni, dated 30.10.2017, confirming the Judgment in S.T.C.No.187 of 2011 on the file of the learned Judicial Magistrate, Theni, dated 10.03.2014.

2.The petitioner is the complainant and the respondent is an accused in the complaint lodged by the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.According to the petitioner, the respondent issued a cheque in order to discharge his liability for the sum of Rs.12,64,094/- in favour of the petitioner. The said cheque was presented for collection and the same was returned for the reason 'funds insufficient'. After causing statutory notice, the petitioner lodged the complaint.



Crl.R.C(MD)No.332 of 2018

WEB COPY

4. In order to prove his case, on the side of the petitioner, P.W.1 to P.W.3 were examined and also marked Exs.P.1 to P.16 and on the side of the respondent, he had examined D.W.1 to D.W.4 and Ex.D.1 was marked and also marked Ex.X.1 to Ex.X.5.

5. On perusal of the oral and documentary evidence, the trial Court dismissed the complaint filed by the petitioner and acquitted the respondent. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.13 of 2017 on the file of the learned Additional District and Sessions Judge, Theni and the Appellate Court also dismissed the same confirming the order of the trial Court. Hence, the present revision.

6. The learned counsel appearing for the petitioner would submit that both the Courts below dismissed the complaint only for the reason that the petitioner failed to mention the date of borrowal and place of borrowal. In order to discharge the liability, the cheque was issued and as such, the petitioner need not proceed about the date of borrowal and date of placement. The presumption/rebuttal



Crl.R.C(MD)No.332 of 2018

which is presumed unless the contrary is proved that the holder of the cheque has received cheque for discharge in whole or in part of any debt or any other. The respondent also categorically admitted the signature found in the cheque and also the issuance of the cheque in favour of the petitioner. The respondent also failed to rebut the evidence in the manner known to law. Even then, both the Courts below acquitted the respondent. Therefore, the petitioner discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act and as such, both the Courts below ought to have convicted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

7. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8. On perusal of the records revealed that in order to rebut the presumption as contemplated under Section 139 of the Negotiable Instruments Act, the respondent had examined D.W.1 to D.W.4 and marked Ex.D.1. The specific case of the respondent was that the complainant had never lent any loan in favour of the respondent. The respondent raised a doubt regarding the



Crl.R.C(MD)No.332 of 2018

presumption of a subsisting liability between the petitioner and the respondent at the time of issuance of cheque. In fact, the petitioner lodged a complaint against the respondent before the police. In the said complaint, the respondent was kept in wrong confinement for two days. Therefore, there was absolutely no possibility for the issuance of the alleged cheque on the specified date. The respondent also proved that he was kept in custody on 15.12.2009, wherein the alleged cheque was issued on 21.12.2009. The petitioner also failed to mention the date of borrowal of loan and the place of issuance of the cheque. Therefore, the respondent categorically rebutted the presumption arising out of the provision under Section 139 of the Negotiable Instruments Act. The burden was shifted to the petitioner to prove his case.

9. Though the evidential burden is initially placed on the defendant by virtue of Section 118 of the Negotiable Instruments Act, it can be rebutted by the defendant by showing the preponderance of probabilities that such consideration as stated in the pronote or in the suit notice or in the plaint does not exist and once the presumption is so, the initial evidential burden, the defendant can rely on direct evidence or circumstantial evidence or



Crl.R.C(MD)No.332 of 2018

on the presumption of law or fact. Once such convincing rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the plaintiff who has the legal burden. Admittedly, the petitioner failed to prove his case. Further, the petitioner failed to prove by producing any iota of evidence about the existence of a legally enforceable debt. Hence, both the Courts below rightly dismissed the complaint filed by 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.

11.04.2023

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



Crl.R.C(MD)No.332 of 2018

WEB COPY

To

The Additional District and Sessions Court,
Theni.



WEB COPY



Crl.R.C(MD)No.332 of 2018

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.332 of 2018

11.04.2023