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Crl.R.C.(MD)No.453 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 06.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.453 of 2016

M.Hariharan

... Petitioner/Appellant/Accused

vs.

M/s.Ponmathi Finance,
Rep. by its Partner,
Nallusamy,
S/o.Karuppanna Gounder,
133-B, M.G.Road,
Karur Town and District.

...Respondent/Respondent/Complainant

PRAYER : This Criminal Original Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.15 of 2016 by Judgment dated 20.04.2016, confirming the conviction and modifying the sentence of imprisonment of 6 months to 3 months simple imprisonment and to pay a fine of Rs.2,500/- in default to undergo 30 days Simple Imprisonment for an offence under Section 138 of Negotiable Instruments Act, imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in C.C.No.517 of 2014 by the Judgment dated 05.02.2016 and set aside the Judgments of the Court below and acquit the petitioner.

For Petitioner : Mr.S.Deenadhayalan

For Respondent : Mr.V.Sukumar



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ORDER

This Criminal Revision Case is filed to call for the records of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Karur in Crl.A.No.15 of 2016 by Judgment dated 20.04.2016 and by confirming the conviction and modifying the sentence of imprisonment of 6 months to 3 months simple imprisonment and to pay a fine of Rs.2,500/- in default to undergo 30 days Simple Imprisonment for an offence under Section 138 of Negotiable Instruments Act, imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur in C.C.No.517 of 2014 by the Judgment dated 05.02.2016 and set aside the Judgments of the Court below and acquit the petitioner.

2.The respondent/complainant has filed a complaint under Section 200 of Cr.P.C against the petitioner for the offences under Section 138 r/w 142 of N.I Act. The allegation against the petitioner is that on 17.02.2012, he borrowed a sum of Rs.4,00,000/- from the respondent for his business purpose and for family expenses and he also agreed to repay the same with interest. Further, he also executed the promissory note in favour of the respondent. The petitioner had paid the interest for the principal loan amount for some period. While being so, he paid some



interest for the principal amount by way of cash and issued cheques towards discharge of the said principal loan amount. When the said cheque was presented for collection, the same was returned for the reason “Payment Stopped by the Drawer”. Immediately, the respondent issued a legal notice and on receipt of the same, the petitioner has not chosen to reply or pay the amount due under the dishonored cheque..

3.On the side of the respondent, two witnesses were examined as P.W.1 and P.W.2 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and on the side of the accused one witness was examined as D.W.1 and marked 14 documents as Ex.D.1 to Ex.D.14.

4.On perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence under Section 138 of N.I Act and sentenced him to undergo six months for Simple Imprisonment and to pay a fine of Rs.2,500/- in default to undergo thirty days for Simple Imprisonment. Aggrieved by the same, the petitioner has preferred an appeal and the First Appellate Court has partly allowed the appeal and reduced the sentence alone from six months to three months. Aggrieved by the same, the present revision has been filed.



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5.The learned counsel for the revision petitioner would submit that there was no legally enforceable debt between the petitioner and the respondent. The respondent specifically deposed that the petitioner and his mother did not owe any liability towards the respondent. Both the Courts below have failed to consider Ex.D.4 and Ex.D.5 (Receipts) issued by the petitioner for settling the entire amount. Therefore, the entire conviction and sentence imposed by the Courts below may not be suspended and the case is liable to be set aside.

6.On perusal of the records reveals that the petitioner received a legal notice issued by the respondent, which was marked as Ex.P.5. Thereafter, he also issued reply notice, which was marked as Ex.P.8. Though the petitioner had taken a specific stand that whatever the amount borrowed by him, that was already returned with interest, but the petitioner never whispered about the discharge of the entire liability in reply notice dated 23.08.2014. That apart, the petitioner has also failed to cross examine the respondent in respect of the return of entire award amount by him. Further, the petitioner has also failed to make any statement recorded under Section 313 of Cr.P.C. that he already return the entire amount and no due from the petitioner. Admittedly, the petitioner paid interest for some period for which, the petitioner had issued receipts



which are marked as Ex.D.1 to Ex.D.7. At the time of borrowing of money, the petitioner issued pro-note. At the time of issuance of cheques, all the pro-notes were cancelled and returned to the petitioner. It does not meant that the petitioner repaid the entire amount. Hence, the respondent categorically proved his case and both the Courts below have rightly convicted the petitioner for the offence under Section 138 of N.I Act. Therefore, this Court finds no infirmity or illegality made by both the Courts below.

7.In view of the above, this Criminal Revision Case is dismissed. However, if the petitioner settles the cheque amount on or before 10.04.2023, the conviction and sentence imposed by the Courts below is hereby set aside.

06.03.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1.The Sessions Judge, Mahalir Neethimandram
(Fast Track Mahila Court), Karur.

2.The Judicial Magistrate,
Fast Track Court at Magisterial Level, Karur.



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G.K.ILANTHIRAIYAN , J.

sjj

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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