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Crl.R.C(MD)No.339 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.339 of 2018

Ramar

....Petitioner

Vs.

Senthilkumar

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgement passed by the learned Principal Sessions Judge, Tiruchirapalli, Tiruchirapalli District in C.A. No.65 of 2016 dated 21.08.2017 whereby confirming the conviction and sentence imposed by the learned Judicial Magistrate, Manaparai, Trichy District in STC No.14 of 2016 dated 26.08.2016 and set aside the same and consequently acquit the petitioner.

For Petitioner : Mr.S.Balaji

For Respondent : Mr.A.Joelpaul Antony

ORDER

This revision has been filed to set aside the order passed by the learned Principal Sessions Judge, Tiruchirapalli, Tiruchirapalli District in C.A. No.65 of 2016 dated 21.08.2017 in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Manaparai, Trichy District in STC No.14 of 2016 dated 26.08.2016



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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. 4 lakhs from the respondent on 15.02.2015 for meeting his urgent family expenses and agreed to pay interest @12% per annum. On the date of borrowal the petitioner had executed a promissory note in favour of the defacto complainant. In order to re-pay the part of the loan amount he had issued two post dated cheques as 22.05.2015 for a sum of Rs.1,00,000/- and another dated Rs.22.06.2015 for a sum of Rs.50,000/- which was drawn from the account of the accused bank namely Karur Vysya Bank at Manaparai Branch. The first cheque was presented for collection and the same was returned dishonoured for the reason insufficient funds. At his request the cheque was again represented and on the second time also it was returned dishonoured for the very same reason ie.,insufficient funds. Thereafter the respondent had caused legal notice and the same was duly received by the petitioner. However the petitioner neither sent any reply to the legal notice nor repaid the cheque amount, hence the complaint.



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4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.8 and on the side of the petitioner, two witnesses were examined as D.W.1 and D.W.2 and Ex.D.1 and D.2 were marked. Court witness was examined as C.W.1 and one document was marked as Ex.X.1

5.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and directed to pay a compensation of Rs.1,50,000/- to the complainant within two months from the date of judgment under section 357 of Cr.P.C in default to undergo simple imprisonment for a further period of two months. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.65 of 2016 on the file of the learned Principal Sessions Judge, Tirunelveli and the same was also dismissed confirming the conviction and sentence. Aggrieved by the same, the present Revision.

6.The learned counsel appearing for the petitioner would submit that the petitioner has already deposited a sum of Rs. 1,00,000/- to the credit of STC No.14 of 2016 on the file of the learned Judicial Magistrate, Manaparai. He further submitted that the petitioner is ready and willing to pay the remaining amount of Rs.50,000/- within four weeks.



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7. Heard the learned counsel appearing on either side and perused the materials available on record.

8. Perusal of the record reveals the fact that the respondent proved his case beyond reasonable doubts. That apart the petitioner failed to rebut the presumption under section 138 of the N.I.Act. He also admitted the signature found in the cheques and the issuance of cheques. Therefore the trial Court has rightly convicted the petitioner under section 138 of the NI Act, which was also confirmed by the appellate court. However now the learned counsel for the petitioner is now ready and willing to settle the cheque amount .

9. In view of the above, the conviction and sentence passed by the court below is set aside on condition that the petitioner shall deposit the balance cheque amount of Rs.50,000/- to the to the credit of STC No.14 of 2016 on the file of the learned Judicial Magistrate, Manaparai **on or before 27.04.2023.** If the petitioner fails to deposit the balance amount within the stipulated time, the conviction and sentence imposed by the court below will be restored and the trial court will pass appropriate orders to secure the petitioner in order to serve the remaining sentence period. Further, on such deposit being made by the petitioner, the respondent is permitted to withdraw the amount deposited.



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10. Accordingly the Criminal Revision Petition stands allowed.

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

1. The Principal Sessions Judge, Tiruchirapalli, Tiruchirapalli District
2. The Judicial Magistrate, Manaparai, Trichy District



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G.K.ILANTHIRAIYAN, J.

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Order made in
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