



Crl.R.C.(MD)No.400 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

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

Crl.R.C.(MD)No.400 of 2018

E.Kisinger

... Petitioner

Vs.

1.Rengasamy

2.State of Tamilnadu Rep.by
The Sub Inspector of Police,
Karur.

... Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the judgment passed by the learned Additional District Court cum Fast Track Mahila Court, Karur in C.A.No.91 of 2017 dated 23.02.2018 reversing the order of acquittal passed by the Judicial Magistrate, Fast Track Court at Magistrate Level, Karur in STC.No.210 of 2012 dated 25.09.2015 and to set aside the order of conviction.

For Petitioner : Mr.S.Suresh Kumar

For R1 : Mr.B.Gokul Raj



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For R2

: Mr.K.Sanjai Gandhi,
Government Advocate(Crl.side)

ORDER

This Criminal Revision Case has been filed to judgment passed by the learned Additional District Court cum Fast Track Mahila Court, Karur in C.A.No.91 of 2017 dated 23.02.2018 reversing the order of acquittal passed by the Judicial Magistrate, Fast Track Court at Magistrate Level, Karur in STC.No.210 of 2012 dated 25.09.2015.

2.The petitioner is an accused in the complaint lodged by the defacto complainant for the offence punishable under Section 138 of Negotiable Instruments Act. The crux of the complaint is that the accused is the proprietor of M/s.Arch Angeles and doing business in handloom made-ups. In order to develop his business he borrowed a sum of Rs.5,00,000/-. In order to repay the said amount, he issued cheque. The said cheque was presented and however, it was returned dishonoured for the reason that “funds insufficient”. Thereafter, the first respondent caused statutory notice and lodged complaint.



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3.The first respondent had examined himself as P.W.1 and marked Ex.P.1 to Ex.P.5. On the side of the petitioner, he had examined Branch Manager as D.W.1 and marked Ex.X1. Court had also examined the son of the defacto complainant as C.W.1 and marked Ex.D1 to Ex.D8. On perusal of oral and documentary evidence, the trial court found not guilty and discharged the petitioner. Aggrieved over the same, the first respondent preferred an appeal and the same was allowed and convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act. The petitioner was also sentenced to undergo six months simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo 2 months simple imprisonment. Hence, the present revision.

4.The learned counsel appearing for the petitioner would submit that at the time of borrowal, the first respondent did not receive any document as security. No prudent man would lend such huge amount of Rs.5,00,000/- without receipt of any document. In fact, the Court had examined C.W.1, who is none other that the son of the first respondent. He categorically deposed that his father has no business dealing with the



petitioner herein. There was no money transaction between them.

Another son of the first respondent was working with the petitioner. He had stolen cheque and presented for collection in the name of the first respondent herein. When the petitioner rebut the presumption as contemplated under Section 139 of NI Act, the first respondent has to prove his case. That apart, the first respondent failed to obtain any document as security while lending money, which shows that the alleged cheque was not issued for any legal enforcement. Therefore, the trial Court rightly dismissed the complaint lodged by the first respondent. Unfortunately, the appellate Court, without considering the same, reversed the findings and convicted the petitioner. In support of his contention he also relied upon the decision of the Hon'ble Supreme Court of India reported in **2007 (12) SCC 714** in a case of **John & John Vs. Tom Vargeese**, in which, the Hon'ble Supreme Court of India held that why no document was not executed and even no interest has been charged. If in a situation of this nature, High Court has arrived at a finding that the respondent has discharged his burden of proof cast on him under Section 139 of NI Act, no exception thereto can be taken.



5.The learned counsel appearing for the first respondent would submit that cheque was issued only for legal enforcement. In fact, signature found in the cheque was also admitted by the petitioner and he has not denied the issuance of the cheque and hence, the first respondent has discharged initial burden as contemplated under provision of NI Act. Hence, the appellate Court rightly convicted and it does not warrant any interference.

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

7.On perusal of records revealed that according to the first respondent, the petitioner borrowed a sum of Rs.5,00,000/- as loan. In order to repay, he had issued cheque, which was marked Ex.P.1, and the same was presented for collection and same was returned dishonoured for the reason that “funds insufficient”. Therefore, the first respondent caused legal notice on 09.09.2009, which was marked Ex.P.4. It was duly received by the petitioner. However, the petitioner failed to rebut the presumption and he did not examine any witnesses either himself or anyone in support of his contention, whereas, he had examined only



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Branch Manager as D.W.1. Therefore, the trial Court acquitted the petitioner only on the ground that the respondent failed to obtain the document at the time of issuing loan. The Hon'ble Supreme Court held in many case that when a person borrowed huge amount normally the money lender used to receive document as security. In the case on hand, the first respondent had discharged his initial burden as contemplated under Section 138 of NI Act. In order to rebut the presumption, the petitioner failed to examine any witness and also failed to produce any material in support of his contention. The petitioner's case is that the alleged cheque was stolen by the one of the sons of the first respondent, who was working under the petitioner. However, the petitioner did not lodge any complaint in this regard. Even after summons from the trial Court, the petitioner failed to lodged any complaint and failed to take any steps to rebut the presumption. The petitioner also attempted the signature found in the cheque. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful in the case on hand. The contradiction found in the deposition of P.W.1 and C.W.1, is not affected the case of the first respondent. In fact, the petitioner also failed to make any statement under Section 313 Cr.P.C., before the trial



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Court. Hence, the petitioner failed to rebut the presumption as contemplated under Section 138 of NI Act, in the manner known to law.

Hence, the appellate Court rightly convicted the petitioner and this Court finds no illegality or infirmity in the judgment passed by the appellate Court. Accordingly, this criminal revision case is dismissed.

05.04.2023

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

- 1.The Additional District Court cum Fast Track Mahila Court,
Karur.
- 2.The Judicial Magistrate, Fast Track Court at Magistrate Level,
Karur.
- 3.The Sub Inspector of Police,
Karur.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN,J.

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