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.524 of 2018

S.Balaguru ... Petitioner/
Appellant/Complainant

Vs.

G.Kannan ... Respondent/
Respondent/Accused

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the Judgment passed in Criminal Appeal No.90 of 2017 on the file of the learned Additional Sessions Judge / Fast Track Mahila Court, Karur, dated 12.10.2017, confirming the conviction and sentence passed in C.C.No.116 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, dated 16.02.2015 by allowing the Criminal Revision Petition.

For Petitioner : Mr.S.Kadarkarai

For Respondent : Mr.S.I.Muthiah

ORDER

This revision has been filed to set aside the order passed in Criminal Appeal No.90 of 2017 on the file of the learned Additional Sessions Judge / Fast Track Mahila Court, Karur, dated 12.10.2017, confirming the conviction and sentence passed in C.C.No.116 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, dated 16.02.2015.

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.The crux of the complaint is that the respondent borrowed a sum of Rs.7,00,000/- on 22.12.2012 as a hand loan and on the same day, he also issued a cheque for the said sum and promised to repay the said loan amount on or before 31.12.2012. The said cheque was presented for collection and the same was returned dishonoured for the reason 'funds insufficient'. After causing statutory notice, the petitioner lodged the complaint.

4.On the side of the petitioner, he himself was examined as P.W.1 and also marked Exs.P.1 to P.6 and on the side of the respondent, he himself was examined as D.W.1 and Ex.D.1 to Ex.D.8 were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted the respondent. Aggrieved by the same, the petitioner preferred an appeal in Criminal Appeal No.90 of 2017 on the file of the learned Additional Sessions Judge / Fast Track Mahila Court, Karur 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 the petitioner discharged his initial burden to draw the presumption under Section 139 of the Negotiable Instruments Act. Even then, both the Courts below dismissed the complaint for the reason that there was no legally enforceable debt or liability. That apart, the Courts below concluded that there was several litigation pending between the respondent and his relatives and to draw the presumption, the complaint itself is not genuine. There is no legal bar to receiving the cheque which is issued for legally enforceable debt. Therefore, he prayed for convicting the respondent for the offence under Section 138 of the Negotiable Instruments Act.

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

8.Admittedly, several litigations are pending between the family members of the respondent from the year 2011, particularly between the respondent and his sister. The case of the appellant is that the respondent's sister's husband recommended for lending loan. Therefore, there is a strained relationship between the family members. Therefore, it is not possible that on the recommendation of the respondent's sister's husband, the appellant had advanced loan. That apart, except the cheque, no other document was executed by the petitioner while lending such a huge amount of Rs. 7,00,000/-. In respect of the source of income, the appellant admitted that he borrowed loan from the financier and purchased vehicles. That apart, on the date of borrowal itself, the respondent issued the alleged cheque for the said sum. It is unbelievable that no prudent man would issue cheque for repayment of the loan borrowed on the same date, namely, the date of borrowal in order to discharge the said liability. In order to rebut the presumption, the respondent had examined D.W.1 and marked Ex.D.1 to Ex.D.8. All those documents proved that there is a strained relationship between his family members and categorically rebutted the presumption. Therefore, the entire burden shifted on the side of the petitioner and even then, the petitioner failed to prove his case in the manner known to law. Therefore, both the Courts below rightly acquitted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act 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
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To

1.The Additional Sessions Judge /
Fast Track Mahila Court,
Karur.

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

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.524 of 2018

11.04.2023