BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.538 of 2018

S.Muthukumar ... Petitioner/Appellant/Accused

Vs.

V.Muthuraj ... Respondent/Respondent/Complainant

PRAYER : This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.12 of 2017 on the file of the learned VI Additional District Court, Madurai, dated 14.06.2018 which confirmed the judgment in STC.No.442 of 2012 on the file of the learned Judicial Magistrate No.I, Fast Track Court at Magistrate Level, Madurai, dated 05.01.2017.

For Petitioner : Mr.T.C.S.Thillainayagam

For Respondent : Mr.R.J.Karthick

O R D E R

This Criminal Revision Case has been filed to set aside the judgment passed in C.A.No.12 of 2017 on the file of the learned VI Additional District Court, Madurai, dated 14.06.2018, which confirmed the judgment made in STC.No.442 of 2012 on the file of the learned Judicial Magistrate No.I, Fast Track Court at Magistrate Level, Madurai, dated 05.01.2017.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

3. The crux of the complaint is that the petitioner and the respondent were jointly doing real estate business. Due to some misunderstanding between them, both of them decided to windup their partnership business. As per the settlement, the petitioner was proposed to pay a sum of Rs.1,13,20,000/- to the respondent. The petitioner also issued a letter of confirmation in favour of the respondent and admitted his liability. Towards part settlement, the petitioner issued a cheque bearing No.534514, dated 20.04.2011, for a sum of Rs.20,77,000/- in

favour of the respondent. The cheque was presented for collection, however, the same was returned as dishonored for the reason 'account closed'. After issuance of a statutory notice, the respondent initiated proceedings under Section 138 of the Negotiable Instrument Act, 1881.

4. On the side of the respondent, he has been examined as P.W.1 and four documents have been marked as Ex.P.1 to Ex.P.4. On the side of the petitioner, no witness has been examined and two documents have been marked as Ex.D1 and Ex.D2. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him to undergo one year Simple Imprisonment and also awarded compensation to the tune of the cheque amount. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed by the appellate Court by confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

5. The learned counsel for the petitioner would submit that the respondent failed to produce the letter of acknowledgement as alleged in the complaint in order to prove his case beyond any doubt. In fact, the original cheque was misplaced before the trial Court and thereafter, the

xerox copy of the same was permitted to be marked and the material record was reconstructed. There was material alteration in the cheque. Therefore, the petitioner could not be able to get the expert opinion insofar as the material alteration is concerned. Therefore, the non-production of the letter of confirmation in respect of liability is fatal to the case of the respondent. No adverse inference can be drawn, if the petitioner failed to take any steps under Section 91 of the Cr.P.C. The Courts below have failed to consider Ex.D.1, sale deed executed in favour of respondent's / complainant's wife, namely Saraswathi by the petitioner herein as a part of settlement entered between the petitioner and the respondent regarding winding up of partnership business. Therefore, it is the case of the petitioner that in order to settle the part amount, the cheque bearing No.534514, dated 20.04.2011, was issued for a sum of Rs.20,77,000/- in favour of the respondent, but for the remaining amount, the sale deed was executed in favour of the respondent's wife. Without considering the above facts and circumstances, both the Courts below mechanically convicted the petitioner.

6. Per contra, the learned counsel appearing for the respondent would submit that the petitioner categorically admitted his signature and

also issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instrument Act, 1881. In fact, after receipt of the notice, the petitioner failed to issue any reply notice to rebut the presumption. The petitioner did not even enter into the box in order to rebut the presumption. Therefore, the respondent lodged a complaint before the Central Crime Branch, Madurai and they registered FIR in Crime No.51 of 2011, which was marked as Ex.D.2. However, after initiation of proceedings under Section 138 of the Negotiable Instrument Act, 1881, the said FIR was closed as 'Mistake of Fact'. Therefore, both the Courts below have rightly and concurrently held that the petitioner is liable to punish for the offence under Section 138 of the Negotiable Instrument Act, 1881.

7. Heard both sides and perused the entire materials available on record.

8. Admittedly, the petitioner and the respondent are partners in the real estate business. Due to some misunderstanding arose between them, they decided to windup their partnership on condition that the petitioner is liable to pay a sum of Rs.1,13,20,000/- to the respondent. According to the respondent, towards settlement, the petitioner had executed a sale

deed in favour of the respondent's wife and the same was marked as Ex.D.1. With regard to the balance amount, the petitioner issued a cheque for a sum of Rs.20,77,000/-. It was presented for collection, however the same was returned for the reason 'account closed'. Even before the issuance of proceedings under Section 138 of the Negotiable Instrument Act, 1881, the respondent lodged a police complaint and the same was registered in Crime No.51 of 2011 for the offences under Sections 406 and 420 of IPC r/w 34, 294B and 506(ii) of IPC. Because of initiation of present proceedings, the FIR was closed.

9. The only point raised by the petitioner is that in order to prove the issuance of cheque, the petitioner had executed a letter of confirmation dated 23.03.2011 and thereby, admitted his liability to the tune of Rs.1,13,20,000/-. However, it was not produced by the respondent and failed to mark the same.

10. A perusal of records reveals that though the respondent failed to produce the letter of confirmation in order to prove the admitted liability, the petitioner issued a cheque for a sum of Rs.20,77,000/- and the petitioner also admitted his signature and issuance of cheque. The petitioner never denied that he did not issue the cheque for any legal

enforceable debt. That apart, the petitioner failed to make any statement under Section 313 of Cr.P.C., before the trial Court at the time of questioning. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instrument Act, 1881.

11. Once the issuance of cheque and signature were admitted by the petitioner, it is construed that the cheque was issued by the petitioner in favour of the respondent. That apart, after receipt of the legal notice from the respondent, the petitioner did not even send any reply in order to rebut the presumption. Further, the cheque was not returned for the reason 'insufficient fund' and it was returned as 'account closed'. It clearly shows the intention of the petitioner that only to cheat the respondent, the petitioner had issued the cheque, that too, after closing the account. Therefore, the respondent proved his case beyond any reasonable doubt and both the Courts below have rightly and concurrently held that the petitioner is liable to be punished for the offence under Section 138 of the Negotiable Instruments Act, 1881. Hence, this Court finds no illegality or infirmity in the judgments passed by the Courts below. Accordingly, this Criminal Revision Case is dismissed.

12. The learned counsel for the petitioner would submit that if the petitioner settles the cheque amount, the sentence may be set aside. He would further submit that the petitioner has already paid a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of trial Court.

13. Considering the said request made by the learned counsel appearing for the petitioner, if the petitioner pays the balance cheque amount for a sum of Rs.10,77,000/- in favour of the respondent directly on or before **12.06.2023**, the sentence imposed by the trial Court alone shall be set aside, failing which, the sentence imposed by the trial Court is confirmed. The respondent is also permitted to withdraw the amount, which was already deposited by the petitioner, with accrued interest, if any, by filing an appropriate application.

25.04.2023

NCC : Yes/No
Index: Yes/No
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To

1.VI Additional District Court, Madurai.

2.The Judicial Magistrate No.I,
Fast Track Court at Magistrate Level, Madurai.

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.

G.K.ILANTHIRAIYAN , J.,

rmk

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