



Crl.R.C(MD)No.407 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.407 of 2017

Britto

... Petitioner/
Appellant/Accused

Vs.

Baskar

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records of the learned Additional District and Sessions Judge, Theni at Periyakulam in Crl.A.No.21 of 2015, by Judgment dated 18.10.2016, confirming the conviction and sentence of imprisonment for six months rigorous imprisonment and to pay a compensation of a sum of Rs.2,00,000/- in default to undergo one week simple imprisonment for the offence under Section 138 of the Negotiable Instruments Act, imposed by the learned Judicial Magistrate, Periyakulam in S.T.C.No.1050 of 2009 by Judgment, dated 28.09.2011 and set aside the Judgments of the Court below and acquit the petitioner.

For Petitioner : Mr.R.Shankar Ganesh

For Respondent : Mr.Mohammed Athiff
for M/s.Ajmal Associates



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ORDER

This revision has been filed as against the order passed in Crl.A.No.21 of 2015, by Judgment dated 18.10.2016, on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam, confirming the order passed in S.T.C.No.1050 of 2009 by Judgment, dated 28.09.2011, on the file of the learned Judicial Magistrate, Periyakulam, thereby convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

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 case of the respondent is that the petitioner borrowed a sum of Rs.2,00,000/- on 10.01.2009 for his business purpose and in order to repay the same, he issued cheque. The cheque was presented for collection and it was returned 'dishonoured' for the reason that the 'funds



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insufficient'. Immediately, the respondent caused legal notice and lodged the complaint.

4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.7 and on the side of the petitioner, D.W.1 and D.W.2 were examined and marked Exs.D.1 to D.8.

5.On perusal of the oral and documentary evidence, the trial Court found him guilty under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and also awarded compensation for a sum of Rs.2,00,000/-. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.21 of 2015 on the file of the Additional District and Sessions Court, Theni at Periyakulam and the Appellate Court also confirmed the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision.



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6.The learned counsel appearing for the petitioner would submit that the petitioner never borrowed any amount from the respondent and as such, absolutely there are no legally enforceable debts towards the respondent herein. He never issued any cheque to the respondent, since it was issued in favour of Mujipur Rahman for repaying the loan amount. After execution of the sale deed in favour of Mujipur Rahman, the petitioner failed to get back the cheque which was issued as a security purpose, who in turn, handed over the cheque to the respondent. Hence, the present complaint. He further submitted that he never received any notice since the petitioner had three houses and as such, no statutory notice was served to him. In order to disprove the case of the respondent, he had examined D.W.1 and D.W.2 and categorically rebutted the evidence of the respondent even then, both the Courts below wrongly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.



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7.Per contra, the learned counsel appearing for the respondent submitted that the petitioner categorically admitted the signature found in Ex.P.1 and he never disputed the signature. Therefore, the presumption presumed by the Courts below and rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and it does not warrant any interference by this Court.

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

9.The petitioner raised three grounds in order to set aside the conviction imposed on him for the offence punishable under Section 138 of the Negotiable Instruments Act, as follows:-



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(i) The petitioner was not served with a statutory notice which was marked as Ex.P.4.

(ii) There was no legally enforceable debt since the petitioner did not borrow any amount from the respondent and as such, the alleged cheque was not issued for any legally enforceable debt.

(iii) The respondent had previous enmity in order to purchase the property belonging to the petitioner and as such, the said cheque was misused by the respondent and initiated proceedings under Section 138 of the Negotiable Instruments Act.

10. Though the petitioner raised these grounds, in order to substantiate the same, the petitioner failed to examine the postman. According to him, the petitioner had three residences and as such, if at all any notice came to his house and if he refused to claim the same, the postman would



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have endorsed 'refused to receive'. Whereas, Ex.P.5 states that it was 'unclaimed'. Therefore, some other person might be received and it was endorsed as 'unclaimed'. When it being so, the petitioner ought to have examined the postman to substantiate the said contention. But the petitioner failed to examine any postman in order to substantiate the same.

11.In so far as the legal enforceable debt is concerned, though the petitioner denied any borrowal from the respondent, he admitted his signature and issuance of cheque. According to the petitioner, when he borrowed money from one Mujipur Rahman, he handed over Ex.P.1 as security. Thereafter, the petitioner executed a sale deed in his favour in respect of his property. After the execution of sale deed, the petitioner did not take any steps to return the cheque from the said Mujipur Rahman. In fact, after receipt of summons from the proceedings initiated under Section 138 of the Negotiable Instruments Act, the petitioner failed to lodge any complaint as against the said Mujipur Rahman alleging that he handed over the alleged cheque in favour of the respondent herein. That apart, the petitioner failed to make any statement under Section 313 of Cr.P.C as if the cheque was not issued by him, and it was originally issued to one Mujipur Rahman for security purposes. Therefore, the trial Court rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and this Court finds no illegality or irregularity in the order passed by the Courts below and the Criminal Revision Case



is dismissed.

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



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To

1.The Additional District and Sessions Court,
Theni at Periyakulam.

2.The Judicial Magistrate,
Periyakulam.



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.407 of 2017

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