



Crl.R.C(MD)No.522 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.522 of 2017

Palanisamy

...Petitioner

Vs.

**1.M.Eswaramoorthy
2.The Public Prosecutor,
Dindigul District,
Dindigul.**

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the judgment in C.A.No.34 of 2012, dated 14.03.2016 by the Additional Sessions Judge, Dindigul, confirming conviction and sentence under Section 138 of Negotiable Instruments Act and sentenced to three months S.I and to pay compensation of the cheque amount of Rs.3,00,000/- (Three lakhs only) within two months from the date of pronouncement of judgment under Sections 357(3) of Cr.P.C. by the Fast Track Court at Magisterial Level, Palani in C.C.No.19 of 2011, dated 25.01.2012.

For Petitioner : Mr.S.Saravagan Prabhu

For R1 : Mr.D.Venkatesh

**For R2 : Mr.T.Senthil Kumar
Government Advocate (Crl.side)**



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ORDER

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This Petition has been filed to set aside the order dated 14.03.2016 passed in C.A.No.34 of 2012 on the file of the Additional Sessions Judge, Dindigul, thereby confirming the order dated 25.01.2012 passed in C.C.No.19 of 2011 on the file of the Fast Track Court at Magisterial Level, Palani.

2.The case of the respondent is that on 02.05.2002, the petitioner has borrowed a sum of Rs.3,00,000/- for his business development. He also agreed to repay the said amount within a period of 10 days. On 24.05.2022, when the respondent demanded repayment of the said loan, the petitioner has issued a cheque and the same was presented for collection. But, the cheque was returned dishonored as 'funds insufficient'. Therefore, the respondent issued statutory notice, but the accused did not paid the amount till date. Therefore, the petitioner has committed an offence under Sections 138 of Negotiable Instruments Act.

3. On the side of the complainant, he had examined PW1 to PW3 and marked seven documents as Ex.P1 to Ex.P7. On the side of the



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petitioner, he had examined himself as DW1 and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court convicted the petitioner for the offences under Section 138 of Negotiable Instrument Act, convicted him and sentenced to undergo simple imprisonment for a period of three months and also awarded compensation of Rs.3,00,000/-. Aggrieved by the same, the petitioner preferred an appeal and the appeal was dismissed confirming the judgment passed by the trial Court. Hence, the present revision.

5. The learned counsel appearing for the petitioner would submit that though the petitioner has a rebuttable presumption, the Court below failed to consider the same and convicted the petitioner. However, he is ready and willing to settle the amount and sought for two months time to settle the amount.

6. The learned counsel appearing for the respondent submitted that the petitioner had already borrowed the loan in the year 2002 and he is dragged the matter till now without paying any amount. Therefore, he



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prayed for dismissal of this petition.

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7. Heard the learned counsel appearing for the petitioner, the learned counsel for the first respondent and the learned Government Advocate (Crl.side) appearing for the second respondent.

8. The only defence taken by the petitioner is that he used to borrow a sum of Rs.10,000/- and Rs.20,000/- from the respondent herein. While borrowal of loan, he used to give the cheque for security. Even after repayment of the entire loan amount, the respondent failed to return the cheque. Subsequently, the said cheque was misused by the respondent and filed a complaint. The said contention was not substantiate by any oral and material evidence by the petitioner herein, by marking the cheque as Ex.P1 and statutory notice, which was marked as Ex.P5 and the acknowledgment card was marked as Ex.P6. Even after receipt of the statutory notice, the petitioner failed to reply in order to rebuttable presumption. Therefore, the presumption under Sections 118 and 139 of Negotiable Instruments Act, is in favour of the holder that unless the contrary is proved that the cheque was drawn for consideration and the same was issued to discharge whole or part of any



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legally enforceable debt referred in 138 of Negotiable Instruments Act.

Though the said presumption is a rebuttable presumption, the petitioner herein failed to prove the rebuttable presumption by way of oral and documentary evidence. Hence, both the Courts below rightly convicted the petitioner and this Court finds no infirmity or illegality in the order passed by the Courts below and it does not require any interference by this Court and this Criminal Revision Petition is liable to be dismissed.

9.Accordingly, this Criminal Revision Cases is dismissed. However, if the petitioner settles the entire cheque amount directly to the respondent on or before 28.04.2023, the conviction and sentence imposed by the Courts below is hereby set-aside.

17.03.2023

NCC : Yes/No
Index : Yes / No

vsd



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G.K.ILANTHIRAIYAN, J.

vsd

To

- 1.The Additional Sessions Judge,
Dindigul.
- 2.The Fast Track Court at Magisterial Level,
Palani.

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