



Crl.R.C(MD)No.539 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.539 of 2017

P.Ramesh

... Petitioner/
Appellant/Accused

Vs.

P.Bhuvanesan

... 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 relating to the order passed by the learned Additional Sessions Judge, Karur in C.A.No.30 of 2017, dated 03.04.2017 in partly allowing the Judgment in C.C.No.142 of 2015, dated 07.11.2016 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur and set aside the same.

For Petitioner : M/s.Vilma Remy

For Respondent : Mr.P.Dhanasekaran



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ORDER

This revision has been filed to set aside the order passed by the learned Additional Sessions Judge, Karur in C.A.No.30 of 2017, dated 03.04.2017 in partly allowing the Judgment in C.C.No.142 of 2015, dated 07.11.2016 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur.

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 crux of the complaint is that on 10.02.2015, the petitioner borrowed a sum of Rs.5,00,000/- as a hand loan from the respondent for his urgent needs and family expenses. Thereafter, in order to discharge the liability, the petitioner issued a cheque for the said amount. The cheque was presented for collection, and it was returned 'dishonoured' for the reason that the 'funds insufficient'. Immediately, the respondent caused legal notice and lodged the complaint.



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4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.4 and on the side of the petitioner, no one was examined and no document was marked.

5.On perusal of the oral and documentary evidence, the trial Court found him guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.30 of 2017 on the file of the learned Additional Sessions Judge, Karur and the same was also partly allowed by the Appellate Court thereby confirming the conviction and reduced the sentence alone from one year Simple Imprisonment to three months Simple Imprisonment. Aggrieved by the same, the present Revision.

6.The learned counsel appearing for the petitioner would submit that except the cheque, no documents were produced in order to prove the alleged loan borrowed by the petitioner from the respondent. There is absolutely no illegally enforceable debt between the petitioner and the respondent herein. In fact, the petitioner never borrowed any loan from the respondent and never



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issued any cheque towards any illegally enforceable debt. The alleged cheque was misused by the respondent and initiated the proceedings under Section 138 of the Negotiable Instruments Act.

7.The learned counsel appearing for the respondent would submit that the respondent discharged his burden as contemplated under Section 138 of the Negotiable Instruments Act and as such, the Courts below rightly convicted him for the offence under Section 138 of the Negotiable Instruments Act. In fact, while suspending the sentence, this Court, by order dated 14.07.2017 imposed a condition that the petitioner shall deposit a sum of Rs.1,00,000/-. However, the petitioner did not comply with the same. Hence, the respondent filed a petition in Crl.M.P(MD)No.7116 of 2019 to dismiss the suspension sentence application and the petitioner had taken time and even till today, failed to comply with the same. Therefore, he prayed for the dismissal of the revision.

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



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9.The petitioner borrowed a sum of Rs.5,00,000/- from the respondent and in order to repay the said amount, he issued cheque. The cheque was presented for collection and returned dishonoured for the reasons 'funds insufficient'. Therefore, the respondent caused legal notice and the same was duly received by the petitioner, which was marked as Ex.P.3 and Ex.P.4. Even after receipt of the same, the petitioner failed to reply in order to rebut the presumption as arose under the Negotiable Instruments Act. That apart, the petitioner never denied the signature found in the cheque. Though the petitioner denied the issuance of cheque, in order to substantiate, he did not even examine any witness and did not produce any evidence to substantiate the same. As far as the respondent is concerned, he had discharged his initial burden in order to prove his case as contemplated under Section 138 of the Negotiable Instruments Act. Therefore, the statutory presumption contemplated under Section 139 of the Negotiable Instruments Act shall be drawn in favour of the respondent, until the contrary is proved which is presumed that the cheque was issued for legally enforceable debt or liability. Though the presumption is a rebuttable presumption, the petitioner failed to repay the same. The defence available for the petitioner is the preponderance of probability,



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however, the petitioner failed to substantiate his version by a preponderance of probability. In fact, the petitioner did not make any statement under Section 313 of Cr.P.C in order to rebut the presumption. Therefore, both the Courts below 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. However, if the petitioner paid the cheque amount, namely to the tune of Rs.5,00,000/- (Rupees Five Lakhs Only), to the respondent on or before 24.04.2023, the conviction and sentence imposed by the Courts below stands set aside.

20.03.2023

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

- 1.The Additional Sessions Judge,
Karur.

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



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G.K.ILANTHIRAIYAN, J.

ps

Order made in
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