

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2023

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THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C.(MD)No.558 & 559 of 2017

N.Raja ... Petitioner in both Crl.R.Cs.

Vs.

1.S.Shanthi ... Respondent in Crl.R.C.(MD)No.558 of 2017

2.R.Shankar Ganesh ... Respondent in Crl.R.C.(MD)No.559 of 2017

COMMON PRAYER : Criminal Revision Cases filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records in C.A.Nos.74 & 75 of 2014 dated 16.03.2017 on the file of the Fast Track Mahila Court, Sivagangai, confirming the judgment in C.C.Nos.200 & 201 of 2012 dated 03.12.2014 on the file of the Judicial Magistrate, Karaikudi, and duly set aside the judgment of the courts below by acquitting the revision petitioner.

For Petitioner : Mr.J.Jeyakumaran
(in both Crl.RCs.)

For Respondents : Mr.B.S.Meltiue
(in both Crl.R.Cs.)

COMMON ORDER

This Criminal Revision has been filed to set aside the order passed by the Fast Track Mahila Court, Sivagangai, in C.A.Nos.74 & 75 of 2014 dated 16.03.2017 confirming the judgment in C.C.Nos.200 & 201 of 2012 dated 03.12.2014 on the file of the Judicial Magistrate, Karaikudi.

2.The petitioner is an accused in the complaint lodged by the respondents for the offence punishable under Section 138 of the Negotiable Instrument Act. The case of the respondents is that the petitioner availed loan of Rs.2,00,000/- from the first respondent and Rs.50,000/- from the second respondent and issued cheque and undertook to repay the same. The cheque was presented for collection and the same was dishonored for the reason insufficient funds. After causing notice, the respondents lodged complaint. On the side of the first respondent, he had examined P.W.1 and P.W.2 and marked Ex.B1 to

B6. On the side of the second respondent, he had examined P.W.1 and P.W.2 and marked Ex.B.1 to Ex.B5. On the side of the petitioner, he had examined D.W.1 and D.W.2 and marked Ex.D1 to Ex.D7. The Court also marked document as Ex.X1. On perusal of oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and also awarded compensation to the tune of Rs.2,50,000/-. Aggrieved by the same, the petitioner preferred an appeal and the appellate Court dismissed the appeal and confirmed the judgment of the trial Court. Hence, the present revision.

3.The learned counsel appearing for the petitioner would submit that in order to rebut the evidence, the petitioner examined D.W.1 to D.W.7. Unfortunately, the Courts below did not appreciate the same and convicted the petitioner. The complaint itself is not maintainable since it is barred by limitation. According to the respondents, they issued statutory notice and the same was refused by the petitioner on 02.03.2011. Therefore, the petitioner had time to repay till 17.03.2011.

Without giving any opportunity, the respondents filed the complaint. He would further submit that the respondent's sister also filed another complaint in R.C.358 of 2017 as if the petitioner borrowed a sum of Rs.2,00,000/- from her. Originally, cheque was given to one Padma and the same was misused by the respondents. In fact, the petitioner lodged complaint as against the said Padma before the Inspector of Police, Kundrakudi on 02.10.2010. Therefore, he prayed for acquittal in both cases.

4.Heard both sides and perused the materials available in the record.

5.In both revisions, respondent are the complainants. According to them, the petitioner borrowed loan and cheque were issued. However, the same were returned for the reason “insufficient fund”. After causing statutory notice, the respondents filed their respective complaints under Section 138 of Negotiable Instruments Act. The statutory notice was issued on 28.02.2011 in both cases. Both notices were returned with an endorsement “refused to claim”. Therefore, the return cover with

endorsement was marked as Ex.B4, whereas, the defence taken by the petitioner is that the respondents in both revisions are strangers to him. When he borrowed money from one Padma and he issued signed blank cheque in her favour, after repayment the said loan, those cheques were returned to the petitioner. Both cheques were misused by the respondents and filed the present complaints. Further, the petitioner is resided at No. 3/1440, 4th street, NGO colony, Kalanivasal, Karaikudi, Sivagangai District and the address found in the cover is not belonging to his residence. In support of his contention, he also marked his voter ID, phone bills and Bank pass book. However, the petitioner admitted the signature found in the cheque. In the case on hand, the petitioner failed to rebut the presumption as raised under Section 138 of the Negotiable Instruments Act.

6.That apart, the petitioner also failed to make any submission with regard to the Section 313 Cr.P.C. Insofar as service of notice is concerned, they were returned as unclaimed and it can be taken as deemed service. Therefore, the respondents proved their case and the Courts below rightly convicted the petitioner for the offence under

Section 138 of the Negotiable Instruments Act. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below. Accordingly, these criminal revisions are dismissed. However, the learned counsel appearing for the petitioner would submit that the petitioner may be permitted to settle the cheque amount. Considering the said submission, if the petitioner paid the cheque amount to the respondents in both cases, on or before 24.04.2023, the conviction and sentence imposed by the Courts below are set aside.

16.03.2023

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

- 1.The Fast Track Mahila Court, Sivagangai
- 2.The Chief Judicial Magistrate, Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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G.K.ILANTHIRAIYAN,J.

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