

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2023

CORAM

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

Crl.R.C.(MD)No.564 of 2017

V.K.Veluchamy

... Petitioner

Vs.

Pandiaprabakar

... Respondent

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the judgment dated 23.06.2017 in C.A.No.2 of 2015 on the file of the Additional Sessions Court, Dindigul against the judgment and sentence passed in C.C.No.431 of 2006 by the learned Judicial Magistrate, Nilakottai and set aside the same by allowing the Revision Petition and acquit the petitioner from the charges.

For Petitioner : Mr.R.Narayanan

For Respondent : Mr.V.Om Prakash

ORDER

This Criminal Revision Case has been filed to set aside the

judgment dated 23.06.2017 in C.A.No.2 of 2015 on the file of the Additional Sessions Court, Dindigul against the judgment and sentence passed in C.C.No.431 of 2006 by the learned Judicial Magistrate, Nilakottai.

2.The petitioner is an accused in the complaint lodged by the respondent for offence punishable under Section 138 of the Negotiable Instruments Act. The respondent lodged complaint alleging that the petitioner, for his urgent need and also for development of his business, borrowed Rs.2,00,000/-. Immediately after borrowal of the amount, he issued cheque and assured within a period of one week, it will be returned to the respondent herein. When the respondent demanded to pay the said amount, the petitioner assured that the cheque issued by him will be honoured and he had sufficient funds in his account. On the assurance, the respondent presented the cheque for collection and the same was dishonored with an endorsement “funds insufficient”. Therefore, the respondent issued statutory notice and lodged the complaint. On the side of the respondent, he had examined P.W.1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, he had examined

D.W.1 to D.W.3 and marked Ex.R1 to Ex.R23. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple and also awarded compensation of Rs.2,00,000/-. Aggrieved over the same, the petitioner preferred an appeal and the same was also dismissed confirming the order passed by the trial Court. Hence, the present revision.

3.The learned counsel appearing for the respondent would submit that he only issued blank signed cheque for security purpose and the same was not for any legal enforcement. Therefore, the respondent ought to have prove that the cheque was for legal enforcement, but the respondent failed to prove the same and as such, Courts below ought not to have convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The petitioner had also examined D.W.1 to D.W.3 and marked Ex.R1 to Ex.R23 in order to rebut the presumption.

4.The learned counsel appearing for the respondent would submit

that the cheque was issued only for legal enforcement and the same was proved by the respondent. All the defence taken by the petitioner have not proved by the petitioner before the trial Court by let in evidence. He would further submit that the petitioner admitted the signature found in the cheque and as such, there is presumption under Section 138 of the Negotiable Instruments Act. Therefore, both the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

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

6.The defence taken by the petitioner is that there was no money transaction between the petitioner and the respondent. On perusal of records reveals that the petitioner is a partner in Saptakiri Milk Products, in which, there was one another partner by name, Uthayakumar, to whom the petitioner has handed over signed empty documents, which have been afterwards concocted for this case. Though the petitioner had taken such stand, it is bound and duty of the petitioner to substantiate the same by

let in evidence, whereas, he failed to substantiate the said contention by let in any iota of evidence. That apart, the petitioner received statutory notice and failed to reply the same in order to rebut the presumption. On receipt of the said notice, when the petitioner did not issue any reply notice, shows that the demand made in the notice was categorically admitted by the petitioner. Therefore, the initial burden on respondent's stand, disputed by him in the manner known to law. Hence, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, this Court finds no infirmity or illegality in the orders passed by the Courts below. Accordingly, this criminal revision case is 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, 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
gns

G.K.ILANTHIRAIYAN,J.

gns

To

- 1.The Additional Sessions Court, Dindigul
- 2.The Judicial Magistrate, Nilakottai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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