



Crl.R.C(MD)No.656 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.656 of 2017

and

Crl.M.P.(MD)Nos.9877 and 9878 of 2017

B.Charles

... Petitioner/Appellant/Accused

Vs.

Iyyadurai

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the Judgment dated 06.07.2011 made in Crl.A.No.29 of 2011 on the file of the learned Additional District Judge (Fast Track Court No.1) Tirunelveli and by confirming the Judgment dated 17.02.2011 made in C.C.No.179 of 2008 on the file of the learned Judicial Magistrate Court, Nanguneri, Tirunelveli District and set aside the same.

For Petitioner : Mr.S.R.Anbarasu

For Respondent : Mr.K.Sathyasingh



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ORDER

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This Criminal Revision Petition has been filed to set aside the Judgment passed in Criminal Appeal No.29 of 2011, dated 06.07.2011, on the file of the learned Additional District Judge (Fast Track Court No. 1) Tirunelveli by confirming the Judgment made in C.C.No.179 of 2008, dated 17.02.2011 on the file of the learned Judicial Magistrate Court, Nanguneri, Tirunelveli District.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of N.I. Act. The crux of the complainant is that on 09.12.2007, the petitioner borrowed a sum of Rs.3,00,000/- for his urgent needs and assured that he will repay the same within a period of one month. In order to repay the same, the petitioner issued a cheque and the same was presented for collection. However, it was returned as dishonored for the reason “funds insufficient”. Hence, the respondent caused statutory notice to the petitioner and on receipt of the same, the petitioner did not repay the said amount. Hence, the complaint.



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3.On the side of the respondent, he had examined himself as P.W.1 and exhibited four documents as Ex.P.1 to Ex.P.4. On the side of the petitioner, no one was examined and no documents were marked.

4.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of N.I. Act and sentenced him to undergo one year Simple Imprisonment. Aggrieved by the same, the petitioner has preferred an appeal and the First Appellate Court has dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. Hence, the present revision.

5.The learned counsel for the petitioner would submit that the wife of the respondent herein filed a suit as against the petitioner in O.S.No.71 of 2008 on the file of the Sub Court, Valliyoor. In the said suit, there was a compromise effected by the parties and the respondent has executed a compromise agreement, dated 27.02.2012. In the said agreement, the respondent admitted that the entire loan amount was discharged by the respondent and the wife of the respondent has also given an undertaking to withdraw the suit.



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6.Per contra, the learned counsel for the respondent would submit that the petitioner has denied the said compromise agreement as if entered into between the petitioner and the respondent herein. In fact, the petitioner did not even file any appeal as against the conviction. Only after filing the petition to execute conviction and sentence imposed by the trial Court, the petitioner has filed the present revision with a delay of 1852 days. There was no compromise between the petitioner and the respondent and the petitioner never settled any amount. In fact, he is also taking immediate steps to file a complaint for forgery.

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

8.It is seen that the petitioner never denied the issuance of cheque and the signature found therein. In order to repay the loan amount, which was borrowed by him, the petitioner issued a cheque and it was marked as Ex.P.1. On instructions, it was presented for collection and the same was returned as dishonored with an endorsement “funds insufficient”. Notice was caused by the respondent and the same was duly received.



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They were marked as Ex.P.3 and Ex.P.4. On receipt of the same, the respondent did not send any reply and also failed to settle the amount.

Therefore, the respondent herein discharged his initial burden as contemplated under Section 138 of N.I. Act. Pursuant to that, the cheque was issued for illegally enforceable debt. However, the petitioner failed to repay the same by examining any witnesses and also pay any documents. In fact, after receipt of the statutory notice, the petitioner did not even send any reply in order to rebut the presumption. Hence, both the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of N.I. Act. Therefore, this Court finds no infirmity or illegality in the orders passed by the Courts below.

9. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

27.03.2023

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



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G.K.ILANTHIRAIYAN, J.

sjj

To

- 1.The Additional District Judge (Fast Track Court No.1),
Tirunelveli.
- 2.The Judicial Magistrate Court,
Nanguneri, Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
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