



Crl.R.C(MD)No.768 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.768 of 2017

and

Crl.M.P(MD)Nos.9162 & 9163 of 2017

Palanivel

... Petitioner/
Appellant/Accused

Vs.

1.Selvaraj

... 1st Respondent/
1st Respondent/Complainant

2.The Public Prosecutor,
Dindigul,
Dindigul District.

... 2nd Respondent/
2nd Respondent

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the Judgment in C.A.No.19 of 2016, dated 14.07.2017 on the file of the learned Additional Sessions Judge, Dindigul, confirming the conviction and sentence under Sentence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and to pay a fine amount of Rs. 5,000/- in default to undergo two months Simple Imprisonment by the learned Judicial Magistrate No.2, Dindigul in C.C.No.503 of 2009, dated 20.04.2016 and set aside the same.



Crl.R.C(MD)No.768 of 2017

WEB COPY

For Petitioner	: Mr.M.Annie Mohana Legal Aid Counsel
For R – 1	: Mr.C.Susikumar
For R – 2	: Mr.K.Sanjai Gandhi Government Advocate (Crl. Side)

ORDER

This revision has been filed to set aside the Judgment in C.A.No.19 of 2016, dated 14.07.2017 on the file of the learned Additional Sessions Judge, Dindigul, confirming the conviction and sentence in C.C.No.503 of 2009, dated 20.04.2016, on the file of the learned Judicial Magistrate No.2, Dindigul.

2.The petitioner is an accused and the first respondent is the complainant. The first respondent lodged the complaint as against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the petitioner was employed in a Primary Agricultural Co-operative Bank and he borrowed a sum of Rs.3,00,000/- from the first respondent on 17.05.2009 as a hand loan to meet out his family expenses. He also



Crl.R.C(MD)No.768 of 2017

assured that he would repay the said amount within a period of two months. However, the petitioner failed to repay the same as agreed by him and as such, the first respondent approached the petitioner and demanded to repay the loan amount. In order to repay the said amount, the petitioner issued cheque and the same was presented for collection. It was returned for the reason that 'payment stopped by the drawer'. After causing statutory notice, the first respondent lodged the complaint.

4.On the side of the first respondent, he himself was examined as P.W.1 and also marked Exs.P.1 to P.5 and on the side of the petitioner, he had examined D.W.1 and D.W.2 and marked Ex.D.1.

5.On perusal of the oral and documentary evidence, the trial Court convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo six months Simple Imprisonment and to pay a fine Rs. 5,000/-, in default, to undergo two months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.19 of 2016 on the file of the learned Additional Sessions



Crl.R.C(MD)No.768 of 2017

Judge, Dindigul and the Appellate Court also dismissed the same confirming the conviction and sentence imposed by the trial Court.

Hence, the present revision.

6.The learned counsel appearing for the petitioner would submit that the cheque was not issued for any legally enforceable debt. Therefore, the petitioner issued stop payment and the same was marked as Ex.D.1. In order to rebut the presumption, the first respondent had examined D.W.1 and D.W.2. Even then, convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. The alleged cheque which was marked as Ex.P.1 was stolen since it was issued for security purposes to one Selvam and thereafter it was stolen by the first respondent, who presented the cheque for collection. Immediately, after missing the cheque, the petitioner issued a stop payment to his banker. Therefore, the petitioner categorically rebutted the presumption arising out of Sections 118 and 139 of the Negotiable Instruments Act.

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



WEB COPY

8. On perusal of the records revealed that the petitioner borrowed a sum of Rs.3,00,000/- as a hand loan and in order to repay the said amount, Ex.P.1 was issued in favour of the first respondent. While it was presented for collection, it was returned dishonoured for the reason 'payment stopped by the drawer'. After causing statutory notice, the first respondent lodged the complaint. In fact, the said statutory notice was unclaimed by the petitioner and returned with an endorsement as 'unclaimed'. Though the petitioner cross-examined P.W.1, no material was produced to show that Ex.P.1 was stolen by the first respondent. That apart, the petitioner though issued a stop payment to his banker, he failed to establish that on the date of issuance of the stop payment, he maintained the account with money in order to honour the cheque. On the other hand, the first respondent had discharged his initial burden and fulfilled the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Though it is rebuttable in nature, the petitioner failed to rebut the same by a preponderance of probability. 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 infirmity or illegality in the order passed by the Courts below.



Crl.R.C(MD)No.768 of 2017

9.However, the learned counsel appearing for the petitioner would submit that if the petitioner settled the entire cheque amount, the sentence may be set aside.

10.Considering the said submission, if the petitioner settled the entire cheque amount to the first respondent on or before 06.06.2023, the sentence imposed by the Courts below is hereby set aside. It is made clear that if the petitioner fails to settle the cheque amount, the sentence imposed by the Courts below is hereby restored without any further reference to this Court. Accordingly, this Criminal Revision Case is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

17.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps



Crl.R.C(MD)No.768 of 2017

To

WEB COPY

1.The Additional Sessions Judge,
Dindigul.

2.The Judicial Magistrate No.2, Dindigul.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.768 of 2017

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.768 of 2017

17.04.2023