IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.297 of 2023

1. Mr.C.Gopal
Proprietor M/s.R.K.G.Time Centre.

2. M/s.R.K.G.Time Centre,
Rep. by its Proprietor Mr.C.Gopal ... Petitioners/accused

Vs.

Mr.Saravanan … Respondent /Complainant

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Cr.P.C., to call for the entire records connected with the order passed by the learned Sessions Judge, Magalir Neethimandram (FTMC) of Udhagamandalam in Crl.A.No.24 of 2016 dated 10.12.2020, confirming the order in conviction passed by the learned Judicial Magistrate, Fast Track Court, Conoor in C.C.No.6 of 2014 dated 20.10.2016 and quash the same.

For Petitioner : Mr.C.A.Diwakar

For Respondent : Mr.N.Damodaran

ORDER

The Criminal Revision Case has been filed challenging the conviction and sentence imposed on the petitioners by the Courts below, for the offence under Section 138 of the Negotiable Instruments Act.

2. It is the case of the respondent that the petitioner had borrowed a sum of Rs.7 Lakhs as hand loan and promised to return the same; that on demand made by the respondent, the petitioner had issued a cheque in favour of the respondent for a sum of Rs.7 Lakhs bearing No.0257928 drawn on Bank of India, Coonoor Branch; and that when the cheque was presented for collection, it was returned with an endorsement 'Account Closed'; and inspite of statutory notice, the petitioner neither responded to the notice nor made payment; and that therefore, the petitioner is liable for the offence under Section 138 of the Negotiable Instruments Act.

3. The respondent herein examined himself as PW1 and marked Ex.P1 to P10. The petitioner herein had examined DW1, the Bank Manager and marked Ex.D1 and Ex.D2.

4. The trial Court found that the defence of the petitioner that he had lost the cheque cannot be believed; that the petitioner could have issued an old cheque for his liability; and therefore, since the petitioner had not rebutted his statutory presumption, the petitioner is liable for the

offence under Section 138 of the Negotiable Instruments Act. Accordingly, the petitioner was convicted for the offence under Section 138 r/w 142 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and to pay the cheque amount of Rs.7,00,000/- as compensation to the respondent/complainant. The appellate Court had confirmed the conviction and sentence imposed by the trail Court.

5. The learned counsel for the petitioner would submit that the complaint is bereft of any details as to the date on which the said loan amount of Rs.7 Lakhs was paid to the petitioner; that the cheque bearing No.0257928 was lost in the office of the petitioner and immediately thereafter, in the year 2004, the petitioner informed the bank about the missing cheque and requested stop payment, which was also recorded in the Stop Payment Register maintained at the Bank, which was marked as Ex.D1; that the evidence of PW1/complainant is self contradictory; that the complainant had stated that even before the money was borrowed by the petitioner, he had issued a cheque which is opposed to common sense and logic; that he had stated that the petitioner had received Rs.2 lakhs on one occasion without mentioning the date; that this version is contrary

to the version in the complaint that the petitioner received Rs.7 Lakhs in one lumpsum; and that in view of the above infirmities, the petitioner had rebutted the statutory presumption and therefore, the judgments of the Courts below are liable to be set aside.

6. *Per contra*, the learned counsel for the respondent/complainant would submit that the complainant in his proof affidavit has clearly stated that he had lent a sum of Rs.7 lakhs as hand loan and towards discharge of the said liability, the petitioner/accused had issued a cheque; that the letter which is said to have been sent by the petitioner to the Bank stating that the cheque was stolen, was not marked; that the statutory presumption has not been rebutted by examining the petitioner or any other witnesses; that the petitioner had not responded to the statutory notice issued under Section 138 of the Negotiable Instruments Act and minor contradictions in the evidence of PW1/complainant would not amount to rebutting the statutory presumption; and therefore, the judgment of the Courts below have to be confirmed and in any case, there is no infirmity warranting interference in the revision.

7. Heard the rival submissions made by the learned counsel on

either side and perused the all the materials available on record.

8. It is the case of the respondent/complainant that a sum of Rs.7 lakhs was given as a hand loan to the petitioner. In the complaint there is no mention about the exact date on which the said amount was paid to the petitioner. The complaint also does not state as to whether the said sum of Rs.7 Lakhs was paid in one lumpsum or in several part payments. The cheque is said to have been issued in the year 2013. The complainant in his cross examination would state that the petitioner had received the said amount in the month of March 2013 and had issued the cheque even before the said date. This deposition cannot be ignored and brushed aside stating that is of no consequence. When the complainant is unable to state the date on which the cheque was issued, this admission in the cross examination assumes significance. It is improbable to say the least for a person to issue a cheque even before obtaining a loan.

9. Be that as it may. The petitioner had examined DW1, the Manager of the Bank in which he maintained the account. DW1 had deposed that the petitioner had sent a letter on 19.02.2004 to the effect

that two cheques of which the subject cheque bearing No.0257928 is one of them, were stolen and if presented for collection, the payments may be stopped. DW1 had also marked Ex.D1, the register maintained by the bank called the 'Stop Payment Register', in which there is a reference to the two cheques. The entry is said to have been made on 19.02.2004. It cannot be said that the petitioner anticipated a prosecution nine years later and had issued a stop payment instructions to the bank in the year 2004. Even if the version of the petitioner that the cheques were handed over to his wife and kept in the office were stolen is not accepted, the fact remains that stop payment instructions were given as early as in the year 2004. The cheques were returned for the reason ‘Account Closed’. Therefore, the case of the respondent that the cheques were issued in the year 2013 for an alleged loan obtained and a debt due to the respondent in the year 2013, is improbable.

10. It is well settled that the statutory presumption can be rebutted by pointing out the inherent improbabilities in the evidence adduced on the side of the complainant and also by adducing other evidence. In the instant case, this Court is of the view that the petitioner had shown that the respondent’s case that he had lent a sum of Rs.7 lakhs is not probable

and that the cheque could not have been issued in the year 2013 for the alleged dues. Once this had been done by the petitioner (accused), the burden shifts to the respondent (complainant) to establish as to how the petitioner is liable to pay the said sum and in this case, the respondent has not discharged the said burden. Both the Courts below have not considered this aspect in the proper perspective. Therefore, this Court is of the view that the judgment of the Courts below are liable to be set aside.

11. Accordingly, the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court, Coonoor vide order in C.C.No.6 of 2014 dated 20 10.2016 and the judgment of the learned Sessions Judge, Magalir Neethimandram (FTMC) of Udhagamandalam in Crl.A.No.24 of 2016 dated 10.12.2020, confirming the said conviction and sentence, are set aside. The petitioner is acquitted of the charge and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the petitioner shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

26.11.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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SUNDER MOHAN, J.

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To

1. The Sessions Judge,
   Magalir Neethimandram,
   (Fast Track Mahila Court), Udhagamandalam.

2. The Judicial Magistrate,
   Fast Track Court, Conoor.

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