IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.R.C.No.621 of 2024

M.Navinkumar ... Petitioner

-Vs-

1.M/s.MU4S Security Services,
represented by its Partner (J.J.Saravanan),
V.K.M. House, V.G.N. Colony,
Sennirkuppam Road,
Poonamallee,
(Near Soba & Soba Constructions & Christ School),
Chennai – 600 056.

2.J.J.Saravanan ... Respondents/A1 & A2

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, praying to call for the records and set aside judgment dated 06.02.2024 of the Additional District and Sessions Judge, Dharmapuri in Criminal Appeal No.12 of 2023 thereby reversing the judgment dated 28.02.2022 of the Judicial Magistrate, FTC, Dharmapuri in S.T.C.No.44 of 2019 and restore the judgment dated 28.02.2022 of the Judicial Magistrate, FTC, Dharmapuri in S.T.C.No.44 of 2019 by allowing this revision.

For Petitioner : Mr.K.S.Vijayaragavan

For Respondents : Mr.S.Sairaman

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ORDER

This Criminal Revision Case has been filed by the petitioner seeking to set aside the judgment passed by the learned Additional District and Sessions Judge, Dharmapuri made in Crl.A.No.12 of 2023 dated 06.02.2024 reversing the judgment passed by the learned Judicial Magistrate, FTC, Dharmapuri in S.T.C.No.44 of 2019 dated 28.02.2022.

2. It is averred that the petitioner/complainant and the respondents/accused are known to each other by a common friend. In the month of December, 2016, the accused borrowed a sum of Rs.3,38,000/- from the complainant for business requirements and agreed to return it back within a period of 6 months along with interest at the rate of 18% p.a. The accused requested the complainant to transfer the money in three bank accounts. As per his instructions, the complainant transferred a sum of Rs.1,40,000/- to the account of accused and Rs.1,23,000/- to one Jeeva who is the wife of the accused and Rs.75,000/- to one Kothandam. When the complainant asked for the repayment of borrowed money after six

months, the accused-2 issued City Union Bank cheque bearing No.000240 dated 30.01.2019 in favour of the complainant for a sum of Rs.3,38,000/-. When the complainant presented the cheque through his banker for collection on 14.02.2019, the same was returned as "Insufficient Fund" with a return memo on 14.02.2019 to the complainant. Hence, the complainant issued legal notice to the accused-2 dated 04.03.2019 calling upon the accused to repay the borrowed money within 15 days, which was not received by accused-2 and the notice was returned to complainant on 15.03.2019 with an information "door locked intimation delivered". Therefore, left with not other alternative, a complaint was filed by the petitioner as against the respondents for an offence u/s 138 of Negotiable Instruments Act before the trial court in S.T.C.No.44 of 2019. While so, after trial, the court below had disposed the said complaint filed by the petitioner by convicting the respondents vide judgment dated 28.02.2022, against which, the 2nd respondent preferred an appeal before the lower appellate court in Crl.A.No.12 of 2023 and the lower appellate court vide judgement dated 06.02.2024 allowed the appeal by acquitting the respondents. Challenging the same, the petitioner has preferred the present revision before this court.

3. Learned counsel for the petitioner submitted that amount was transferred through three bank accounts as instructed by the 2nd respondent. He further submitted that 2nd respondent did not deny issuance of cheque and the signature in the cheque/Ex.P.3. Once the signature was admitted and the accused failed to prove their case, the petitioner is entitled for statutory presumptions in favour of the petitioner and the burden to rebut the said presumption is upon the accused, however, the accused had not rebutted the presumption. He further submitted that, in the cross-examination, the petitioner had deposed that there was a complaint as against the 2nd respondent's wife, that will not deprive the rights of the petitioner to file a complaint u/s 138 of N.I. Act. Further, in the cross-examination, the petitioner specifically denied that he has not obtained the cheque from the 2nd respondent in the police station and the said cheque was voluntarily issued by the 2nd respondent to the petitioner, which stood dishonoured. By considering all the above aspects, the trial court has rightly convicted the respondents, however, the lower appellate court has acquitted the respondents, which requires interference. Accordingly, he prays for appropriate orders.

4. Per contra, learned counsel appearing for the respondents submitted that, even as per the complaint, the petitioner claimed that he transferred Rs.1,40,000/- to the bank account of 2nd accused and Rs.1,23,000/- to 2nd accused's wife bank account and Rs.75,000/- to one Kothandam's bank account. Though such a averment is averred in the complaint, however the petitioner not examined his bank officials before the trial court to prove that as per the instructions of the 2nd respondent alone, the borrowed amount was transferred to all those three bank accounts, even, it was not proved as against the 2nd respondent for transfer of money of Rs.1,40,000/-. Further, the petitioner himself admitted in his cross-examination that he made a complaint as against the 2nd respondent and his wife before the law enforcing agency. He also admitted in his cross-examination that the cheque was obtained by the police and handed over to the petitioner. Considering the categorical admission by the petitioner in his cross-examination, the lower appellate court has rightly acquitted the respondents, which does not require any interference. Accordingly, he prays for dismissal of the revision.

5. Heard learned counsel for the petitioner as well as the respondents and perused the materials available on record.

6. A perusal of the entire records reveals that, in the complaint, the petitioner claimed that the accused borrowed a sum of Rs.3,38,000/- in December, 2016 for his business development and as per the instructions of the 2nd respondent, the said borrowal amount was paid by the petitioner by transferring Rs.1,40,000/- to the 2nd accused's bank account and Rs.1,23,000/- to the 2nd accused's wife's bank account and Rs.75,000/- to Kothandam's bank account, for which, the 2nd respondent issued a cheque/Ex.P.1 bearing No.000240 dated 30.01.2019 in favour of the petitioner for a sum of Rs.3,38,000/-, which stood dishonoured. The petitioner has not stated exact date, when the 2nd accused borrowed money and when cheque was handed over to him and he has lent a huge amount of Rs.3,38,000/- without any security to the 2nd respondent, who is known to him through his friend just one month before lending of amount. Even though the 2nd respondent is his friend, no prudent man would give such a huge money without any security document or for interest and in this regard, there is no explanation on the part of the

petitioner as to why he has lent huge amount of money without interest and why he has not taken any action for nearly three years for getting money back, since the borrowal of money is in the month of December, 2016 and the date of cheque is 30.01.2019.

7. Further, in the statutory notice or complaint, the complainant has not stated anything with regard to the fact that the cheque was obtained from 2nd respondent by police authorities in police station. However, only during the cross-examination, the petitioner had admitted that he preferred police complaint against one Divya and the impugned cheque was obtained from the 2nd respondent by police authorities in police station for the debt of the said Divya. Further, the petitioner himself admitted that the impugned cheque was obtained with the help of police authorities in police station and from the deposition of petitioner in his cross-examination, it is established that the cheque was obtained from 2nd respondent subsequent to petitioner preferring police complaint, therefore, this court is of the view that the petitioner has failed to prove that the cheque was issued for any legally enforceable debt. When there is no evidence for the passing of consideration for the execution of the

cheque, mere admission of signature in the cheque does not prove legally enforceable debt. Though the trial court has failed to appreciate the evidence on record in proper perspective and has erred in convicting the respondents, the lower appellate court has rightly appreciated the evidence and acquitted the respondents, which cannot be said to be perverse, illegal or arbitrary.

8. Accordingly, the Criminal Revision Case is dismissed.

24.07.2024

Index : Yes/No
Speaking order / Non-speaking order
NCC : Yes/No
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To

1.The Additional District and Sessions Judge,
Dharmapuri.

2.The Judicial Magistrate, (FTC),
Magisterial Level,
Dharmapuri.

M.DHANDAPANI, J.

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