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CrI.R.C.No.896 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CrI.R.C.No.896 of 2024
and CrI.MP.Nos.15106 and 7677 of 2024

A.C.Javith Imthiyas,

...Petitioner/Appellant/Accused

Vs.

K.Regina

...Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C., to set aside the conviction imposed in the Judgment dated 22.04.2024 made in C.A.No.336 of 2018 on the file of the learned III Additional Sessions Court, (FAC) II Additional Sessions Court, City Civil Court, Chennai – 600 104, confirming the conviction imposed in judgment dated 06.04.2018 made in C.C.No.90 of 2013 on the file of the learned Metropolitan Magistrate (Fast Track Court No.II), Egmore, Chennai.

For Petitioner : Mr.N.Desinghu

For Respondent : Mr.Ajoy Kumar Gnanam



CrI.R.C.No.896 of 2024

ORDER

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The revision challenges the conviction and sentence imposed on the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, 1881.

2. It is the case of the respondent/complainant that the petitioner has borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) from the respondent and had executed a promissory note on 01.06.2011 for the said sum; that towards discharge of the said loan, the petitioner/accused issued a cheque for Rs.5,30,000/- (Rupees Five Lakhs Thirty Thousand only) on 30.01.2012; and that when the said cheque was presented for collection, it was returned due to the reason “funds insufficient,” and in spite of statutory notice, the petitioner did not make any payment.

3.The respondent had examined P.W.1 and marked Exs.P1 to P.6. The petitioner neither examined any witnesses nor marked any documents.



4. The trial Court found that the respondent had established the fact that the petitioner had issued the cheque for a legally enforceable debt; and that the petitioner had not rebutted the statutory presumption and found the petitioner guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to simple imprisonment of one year and to pay a compensation of Rs.10,60,000/- (Rupees Ten Lakhs Sixty Thousand only) in default to undergo three months of simple imprisonment. The Appellate Court confirmed the conviction and sentence imposed on the petitioner.

5. Mr.N.Desinghu, the learned counsel for the petitioner/accused, would submit that the respondent had not established the source of income for lending a huge sum of Rs.5,00,000/- (Rupees Five Lakhs only); and that in spite of the petitioner rebutting the statutory presumption by cross-examining P.W.1, the Courts below had erroneously convicted the petitioner and sought for setting aside the Judgments of the Courts below.



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6. Mr.Ajoy Kumar Gnanam, the learned counsel for the respondent, *per contra*, submitted that both the Courts had considered the defence of the petitioner and rejected it on the ground that it is not substantiated and since the petitioner had not rebutted the statutory presumption and had only denied the averments in the complaint, the Courts below had rightly convicted the petitioner; and hence prayed for dismissal of the petition.

7. This Court, while suspending the sentence imposed on the petitioner, had directed the petitioner to deposit 20% of the cheque amount. However, it is reported that the petitioner has not deposited the cheque amount.

8. Be that as it may. In order to establish that the cheque was issued by the petitioner, the respondent had examined herself as P.W.1. In order to establish the debt, the respondent had marked Ex.P1, the pronote. The statutory notice was marked as Ex.P5 and the acknowledgement card was marked as Ex.P6. Thus, the respondent had established before the trial court



that the cheque issued by the petitioner was dishonoured for the reasons “funds insufficient,” and in spite of statutory notice, the petitioner did not make any payment.

9. The trial Court, on the basis of such evidence, had drawn the presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881. The learned Judge considered the cross-examination of P.W.1 and found that nothing has been elicited to rebut the statutory presumption. This Court finds that there is no infirmity in the said finding, which was confirmed by the Appellate Court. In such circumstances, this Court is of the view that there is no reason to interfere with the findings of the Courts below, holding that the petitioner is guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881.

10. However, considering the nature of the allegations and the relationship of the parties, this Court is of the view that the compensation awarded by the trial Court can be reduced to Rs.8,00,000/- (Rupees Eight Lakhs only) instead of Rs.10,60,000/- (Rupees Ten Lakhs Sixty Thousand



Crl.R.C.No.896 of 2024

only) awarded by the Courts below. The sentence of one year simple imprisonment imposed by the Courts below is confirmed.

11.In the result, the Criminal Revision stands dismissed.

Consequently, the connected Miscellaneous Petitions are closed.

18.12.2024

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No

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Copy to:

1. The III Additional Sessions Judge,
II Additional Sessions Court,
City Civil Court,
Chennai – 600 104.

2. The Metropolitan Magistrate,
(FTC – II), Egmore,
Chennai.



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SUNDER MOHAN, J.

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