IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.175 of 2022
and
Crl.M.P.No.1680 of 2022

V.S.Dhanavel ... Petitioner

Vs.

C.Jaganathan ... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of the code of Criminal Procedure, to set aside the conviction imposed in judgment dated 27.11.2019 made in Crl.A.No.289 of 2018 on the file of the II Additional District and Sessions, Erode District at Erode Court, confirming the conviction imposed in judgment dated 01.08.2018 made in S.T.C.No.435 of 2017 on the file of the Judicial Magistrate Fast Track No.1, Erode.

For Petitioner	:	Mr.M.Guruprasad
For Respondent	:	Mr.V.S.Kesavan

O R D E R

The criminal revision case has been filed seeking quashment of the judgment dated 27.11.2019 passed in Crl.A.No.289 of 2018 on the file of the II Additional District and Sessions, Erode District, confirming the judgment dated 01.08.2018 made in S.T.C.No.435 of 2017 on the file of the Judicial Magistrate, Fast Track No.1, Erode.

2. The petitioner is the accused and the respondent is the complainant. For the sake of convenience, the parties will be hereinafter referred to as 'accused' and 'complainant'.

3. The facts which are required for the disposal of the revision is that the petitioner is an accused in S.T.C.No.435 of 2017 and the respondent is the complainant. The accused borrowed a sum of Rs.10,00,000/- from the complainant for his urgent needs by executing a promissory note in favour of the complainant. The accused issued a postdated cheque for a sum of

Rs.10,00,000/- drawn in favour of the complainant towards discharge of the said loan and got back the original promissory note. The said cheque bearing No.026190 was drawn on the IDBI Bank, Sathy Road, Erode Branch dated 07.07.2017. As per request of the accused, the complainant presented the cheque for collection on 07.07.2017 through State Bank of India and the same was returned with an endorsement 'funds insufficient' by memo dated 10.07.2017. Pursuant to the same, the complainant issued a legal notice to the accused on 13.07.2017. The said notice was received by the accused on 15.07.2017. However, he did not give any reply notice and had not come forward to make the payment within a statutory period. Thereafter, the complainant filed case against the accused before the learned Judicial magistrate, Fast Track Court No.1, Erode which was taken on file in S.T.C.No.435 of 2017. The trial Court convicted the accused by judgment dated 01.08.2018. Aggrieved by the order of conviction, the petitioner / accused preferred an appeal before the learned II Additional District and Sessions Judge, Erode District in Crl.A.No.289 of 2018. The said appeal was also dismissed by the learned II Additional District and Sessions Judge by way of judgment dated 27.11.2019. Against the concurrent judgment, the petitioner / accused preferred the present criminal revision case.

4. The learned counsel appearing for the petitioner / accused assails the impugned judgments on the ground that absolutely there is no legally acceptable evidence on record to prove that for the present transaction between the parties, the cheque was issued. The initial burden of proof is always on the complainant, which he failed to discharge to the satisfaction to the Court. The complainant had not even proved the very execution of the alleged cheque Ex.P1. In fact, the very alleged payment of Rs.10,00,000/- to the petitioner on 01.01.2016 itself has not been properly substantiated. The Court below ought to have considered that any transaction above Rs.20,000/- should be transacted only through instruments and the same was not considered and wrong presumption was made under Sections 118 and 139 of the Negotiable Instruments Act, 1881. The learned counsel further pointed out that mere possession of the cheque with the complainant alone would not satisfy the ingredients of the offence

under Section 138 of Negotiable Instruments Act. There is no proof or documents submitted as to the previous financial transaction between the accused and the complainant and the same was clearly admitted by the complainant in his cross-examination which was not at all considered by the Court below. No books of accounts or any other proof to show that how the complainant got so much of amount to lend and that the complainant has not come before the Court with clean hands. Therefore, the learned counsel for the petitioner submits that the impugned order needs to be interfered with.

5. The learned counsel for the respondent supported the judgment of the Court belows stating that P.W.1 has spoken about the issuance of the cheque in favour of the accused and its dishonour when presented for collection. The signature of the accused in the cheque and its issuance in favour of the complainant was not disputed by the accused. The bank account from which the cheque has been issued is in the name of the accused and the same has also not been denied by the accused. Hence, the presumption laid down under Sections 118 and 139 of the Negotiable Instruments Act are necessarily to be drawn in favour of the complainant.

6. The learned counsel for the respondent further argued that the accused has not explained as to how his signed cheque came into possession of the complainant. Hence, the burden shifts on the accused and he is liable to discharge the same. Though it was argued by the learned counsel for the accused that an unfilled cheque was given as security to the complainant and the same was misused, the accused has not satisfactorily explained under what circumstances the cheque was issued as security. Moreover, the accused has not taken any steps to issue stop payment order to his banker if really he has not borrowed any money. As a prudent man, the accused has not taken any legal steps against the complainant or to get back his cheque. Even the previous financial transaction between the accused and the complainant are well substantiated by the complainant by filing Ex.P5-patta and Exs.P6 to Ex.P8 which are receipts for coconut weight slip and receipts for purchase of paddy. These documents have not been denied by the accused at any stage. Hence, the learned counsel submits that it is proved that the cheque was issued in connection with a legally recoverable debt and

that the cheque was issued by the accused in favour of the complainant has been proved. Moreover, the signature of the accused in the cheque was also not disputed. Therefore, the learned counsel submits that the Court belows properly appreciated the materials placed before it and have passed concurrent finding based upon the facts and circumstances of the case.

7. I have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

8. At the outset, the contention of the learned counsel for the petitioner / accused that there was no legally enforceable debt between the accused and the complainant need not be countenanced in view of the documents such as Ex.P5-patta, Exs.P6 to P8 which are receipts for coconut weight slip and receipts for purchase of paddy. These documents clearly demonstrate that there has been financial transaction between the accused and the complainant. The next crucial point is that the accused has not

denied his signature at any point of time and that the cheque has been issued from the bank account of the accused. Hence, the presumption laid down under Sections 118 and 139 of the Negotiable Instruments Act are necessarily to be drawn in favour of the complainant. The accused also failed to demonstrate as to how the signed cheque came into possession of the complainant. Hence, the presumption under Section 139 of the Negotiable Instruments Act is also attracted. The accused has to prove the defence at least by preponderance of probabilities, but he has not adduced any evidence in this regard. Hence, the burden shifted on the accused which he was liable to be discharged, unfortunately he has not done so. Though the learned counsel for the accused has argued that an unfilled cheque was given as security to the complainant and the same was misused, the accused has failed to explain under what circumstances the cheque was issued as security. That apart, the accused has not taken any steps to issue stop payment order to his banker and this shows that there has been financial transaction between the accused and the complainant. Hence, this Court is of the view that the complainant has proved all the essential ingredients of

Section 138 of the Negotiable Instruments Act and that the accused is held guilty for committing the offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, this Court does not find any ground to interfere with the order passed by the Courts below and accordingly, this revision is liable to be dismissed.

9. This Criminal Revision Case is dismissed with the above observations. Consequently, connected miscellaneous petition is closed.

09.07.2024

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The II Additional District and Sessions Judge,
   Erode District at Erode Court.

2. The Judicial Magistrate Fast Track No.1,
   Erode.

3. The Public Prosecutor,
Madras High Court, Madras.

M.DHANDAPANI, J.

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