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Crl.RC.No.739 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.739 of 2024
and
Crl.M.P.No.6920 of 2024

P.Muskar Hussain

...Petitioner

Vs.

K.Senthilkumar

...Respondent

Petition filed under Section 397 r/w 401 of Code of Criminal Procedure against the judgment of the II Additional District and Sessions Judge, Erode at Erode passed in Crl.A.No.169 of 2018 dated 30.01.2020 confirming the conviction and sentence imposed in S.T.C.No.135 of 2017 passed by the Judicial Magistrate Fast Track I, Erode dated 12.04.2018.

For Petitioner : Mr.J.Prithivi

For Respondent : Mr.V.Ragunathan

ORDER

This Criminal Revision Case is filed against against the judgment of the II Additional District and Sessions Judge, Erode passed in Crl.A.No.169 of 2018 dated 30.01.2020 confirming the conviction and sentence imposed in S.T.C.No.135 of 2017 passed by the Judicial Magistrate Fast Track I,



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Erode dated 12.04.2018.

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2. It is the case of the prosecution that the petitioner / accused had borrowed a sum of Rs.2,00,000/- from the respondent / complainant for his urgent expenses on 30.10.2016 and had promised to repay the same with an interest at the rate of 18% p.a. and towards discharge of his liability, the accused issued a post dated cheque for a sum of Rs.2,00,000/- to the complainant. When the said Cheque was presented for collection, the same were returned for want of necessary funds. Though, the complainant issued a legal notice to the accused on 01.04.2017 intimating the dishonour of the cheque, the petitioner has neither received the said notice nor replied to the said notice. Against which, the respondent filed a petition u/s.138 r/w 142 of the Negotiable Instruments Act in STC.No.135 of 2017 before the learned Judicial Magistrate Fast Track No.1, Erode and after trial, the trial Court vide order dated 12.04.2018 had convicted and sentenced the accused to undergo simple imprisonment for a period of six (6) months and awarded compensation to the tune of Rs.2,00,000/- in default, the accused was ordered to undergo one month simple imprisonment. Challenging which, the



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petitioner preferred an appeal before the learned II Additional District and Sessions Judge, Erode in Crl.A.No.169 of 2018 and the same was dismissed vide order dated 30.01.2020 confirming the order passed in STC.No.135 of 2017 on the ground that the petitioner failed to rebut the statutory presumption with convincing and cogent evidence. Challenging the same, the petitioner has filed the present revision petition.

3. The learned counsel for the petitioner submits that though the petitioner had discharged his burden by cross examining the complainant in detail, however, the respondent failed to prove that there was a legally enforceable debt. He further submitted that the ingredients of Section 138 of the Negotiable Instruments Act were not made out and hence conviction is not sustainable. Accordingly, he prayed for appropriate orders.

4. The learned counsel appearing for the respondent submits that during the questioning u/s.251 of Cr.P.C. the petitioner has stated that he will settle the cheque amount. He further submitted that the petitioner himself admitted the transaction between the petitioner and the respondent.



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Since the accused failed to rebut the statutory presumption with convincing and cogent evidence, the lower appellate Court has rightly dismissed the appeal filed by the petitioner cannot be interfered with.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials placed on record.

6. It is the claim of the petitioner that the disputed cheque was not issued in connection with any legally recoverable debt and that the complainant has no sufficient means to advance such amount. However, the respondent claims that the respondent is working as a professor in a college and drawing a salary of Rs.1,00,000/- per month and also pointed out that the during the questioning u/s.251 of Cr.P.C. the petitioner has stated that he will settle the amount payable to the respondent. When all the essential ingredients of Section 138 of Negotiable Instruments Act has been proved by the complainant, the lower appellate Court dismissed the appeal filed by the petitioner by confirming the conviction and sentence passed by the trial



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Court in STC.No.135 of 2017 as the petitioner failed to rebut the statutory presumption and upon perusing the oral and documentary evidence, the impugned judgment has been passed by the lower appellate Court and the same cannot be interfered with.

7. With the above observation, this Criminal Revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

28.06.2024

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To

1. The Judicial Magistrate Fast Track I, Erode
2. II Additional District and Sessions Judge, Erode

M.DHANDAPANI, J.

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