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Crl.RC No.127 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.127 of 2023
and
Crl.M.P.Nos.934 & 935 of 2023

P.Mani ... Petitioner/sole accused

Vs.

V.Senthil Kumar ... Respondent / Complainant

PRAYER: Criminal Revision Case filed under Sections 438 r/w 442 of the BNSS, to set aside the conviction imposed in the judgment dated 30.08.2022 pronounced in Crl.A.No.134 of 2021 on the file of the learned III Additional District and Sessions Judge of Erode District and Gobichettipalayam confirming the conviction imposed in judgment dated 21.09.2021 made in CC.No.15 of 2019 on the file of the learned Judicial Magistrate No.II, Gobichettipalayam by allowing this Criminal Revision Petition.

For Petitioner : Mr.N.Chinnaraj

For Respondent : Mr.Mathan Raj
for M/s.V.Anandhamoorthy



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ORDER

The Criminal Revision Case challenges the judgments of the Courts below convicting the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for one year and to pay the cheque amount of Rs.4,75,000/- as compensation to the respondent.

2. It is the case of the respondent that during the first week of October, 2018 the petitioner had obtained a loan of Rs.4,75,000/-; that when the respondent demanded payment, he had issued a cheque on 07.11.2018 for the said sum; that when the said cheque was presented for collection, it was returned unpaid for the reason, 'payment stopped'; and that inspite of statutory notice, the petitioner did not make any payment.

3. The trial Court found that the petitioner had not rebutted the statutory presumption and had merely denied the averments in the complaint and therefore, the petitioner is liable to be punished for the offence under Section 138 of the Negotiable Instruments Act and sentenced as stated above. The appellate Court also confirmed the



finding of guilt and the sentence imposed by the trial Court.

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4. The learned counsel for the petitioner submitted that the respondent had not established his capacity to lend a sum of Rs.4,75,000/- and hence, the cheque was not supported by any consideration; that therefore, the Courts below had erroneously convicted the petitioner and prayed for setting aside the judgments of the Courts below.

5. The learned counsel for the respondent *per contra* submitted that the petitioner had not denied the signature in the cheque; that the petitioner had taken two contradictory stands i.e., one in the reply to the statutory notice, where he has stated that the cheque was issued for security purpose and the other in the cross examination where he had stated that the cheque was lost and misused by the petitioner; and that the respondent had stated in the cross examination, the source of his income and his capacity to lend a sum of Rs.4,75,000/-; and that the Courts below had rightly convicted the petitioner.

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



either side and perused the materials available on record.

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7. On perusal of the judgments of the Courts below, it is seen that the petitioner and the respondent are known to each other. The petitioner had not denied his signature in the cheque. In his reply notice, he had stated that the cheque was given to the respondent as a security and there is no amount due to the respondent, whereas the evidence of PW2 is that the accused had issued stop payment instructions since the cheque was stolen. Therefore, the case of the petitioner in the reply notice is false. That apart, the petitioner has not rebutted the statutory presumption, in any manner except for suggesting to the respondent that he had no capacity to lend a sum of Rs.4,75,000/-. The respondent in the cross examination had explained that he was earning Rs.4 to 5 lakhs per annum from agriculture.

8. It is well settled that in a complaint under Section 138 of the Negotiable Instruments Act, the complainant would be entitled to a statutory presumption under Sections 139 and 118 of the Negotiable Instruments Act. The accused can rebut the statutory presumption either



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by showing the improbability in the case of the complainant or by adducing independent evidence. However, no such effort has been taken by the respondent and the Courts below rightly found that the respondent had established his case. Therefore, this Court finds that there is no infirmity in the judgments of the Courts below, warranting interference in this revision.

9. Accordingly, the Criminal Revision Case is dismissed, confirming the conviction and sentence imposed by the Courts below. Consequently, the connected Criminal Miscellaneous Petitions are closed.

02.12.2024

Index: Yes/No
Speaking/Non-speaking order
Neutral citation: Yes/No.
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To

1. The III Additional District and Sessions Judge,
Gobichettipalayam.

2. The Judicial Magistrate No.II,
Gobichettipalayam.



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SUNDER MOHAN, J.

ars

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