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Crl.R.C.No.2064 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2064 of 2023

Babu Singh

... Petitioner

Versus

Mohan Singh

...Respondent

PRAYER: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to set aside the orders passed in Criminal Appeal No.194/2022 dated 18.08.2023 on the file of the XXI Additional Sessions Judge, City Civil Court, Chennai partly confirming the order passed in C.C.No.4624 of 2018, dated 26.07.2022 on the file of Metropolitan Magistrate Fast Track Court-I, Egmore at Allikulam, Chennai.

For Petitioner : Mr.M.Sunil Kumar
For Respondent : Mr.S.Syed Basha

ORDER

The petitioner/accused was convicted by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam (Trial Court) in C.C.No.4624 of 2018 *vide* judgment, dated 26.07.2022 and sentenced to undergo two years Simple Imprisonment and to pay double the cheque amount as compensation to the respondent/complainant within one month in default to undergo Simple Imprisonment for six months for offence under Section 138 of the Negotiable Instruments Act, 1881. Challenging the same,



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an appeal was filed by the petitioner before the learned XXI Additional Sessions Judge, City Civil Court, Chennai (lower appellate Court) in Crl.A.No.194 of 2022 and the same was partly-allowed on 18.08.2023 confirming the conviction and modifying the sentence to payment of Rs.9,50,000/- as compensation to the respondent within two months in default to undergo Simple Imprisonment for six months. Aggrieved over the same, the present criminal revision case is filed.

2.Gist of the case is that the petitioner/accused approached the respondent for loan of Rs.6,37,650/- to meet his urgent business and family expenses. Believing his words, the respondent gave loan of Rs.6,37,650/- on 19.09.2017 to the petitioner. In discharge of the liability, the petitioner issued a cheque for Rs.6,37,650/- bearing No.002584, dated 08.01.2018 drawn on IDBI Bank No.14, Pudupet Road, Thirupathur. The respondent deposited the above said cheque in State Bank of India, Wallahjah Road Branch, Chennai for collection on 08.02.2018. The cheque was returned dishonoured for the reason 'Account Closed' and the same intimated through his Banker on 09.02.2018. Thereafter statutory notice was issued to the petitioner on 13.02.2018 demanding him to pay the dishonoured cheque amount within fifteen days from the date of receipt of the notice. Despite receipt of notice,



the petitioner neither made any reply nor returned the amount. Hence, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed before the trial Court. During trial, on the side of the respondent, he examined himself as PW1 and marked four documents as Exs.P1 to P4. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted and sentenced the petitioner as stated above.

3.The learned counsel for the petitioner submitted that the petitioner and the respondent are known to each other, in pursuance to the relationship, the respondent used to visit the petitioner, at that time, he had stolen three cheques of the petitioner. The respondent by using one of the cheques, foisted a false case against the petitioner. The respondent admits that the cheque was filled up by him which confirms that without any authority the respondent filled up the cheque on his own accord. The petitioner had disputed the writings and signature in the cheque. The respondent admits that for the financial year 2018-2019, his overall income is only two to three lakhs. Such being the position, the respondent not established the source of income for extending loan of Rs.6,37,650/- to the petitioner. On the admission of the respondent, it is seen that the entire loan amount paid to the



petitioner through cash which is against Section 269SS of the Income Tax Act wherein an amount more than Rs.20,000/- has to be transacted through bank.

The trial Court had given a finding that the petitioner not objected or disputed the writings and signature in the cheque while marking the documents, only during cross examination raised objections, hence, the same cannot be considered is not proper. Further the trial Court finding that it is obligatory on the petitioner's part to summon the bank officials to prove the issuance of the blank cheque.

4.The learned counsel further submitted that the petitioner when disputed his handwriting and signature, it is obligatory on the part of the respondent to examine the bank official from IDBI Bank to prove his defence is not proper. There is nothing to show that the amount filled cheque handed over to the respondent and the cheque was issued for discharge of any liability. The respondent is not a man with resources to lend such huge amount. The Hon'ble Apex Court and this Court in plethora of judgments held that in a case of 138 of the Negotiable Instruments Act, the source of income has to be proved. Further, in the Income Tax Returns, this loan not mentioned by the respondent.



5.He further submitted that on the complaint of the respondent, a case in Crime No.192 of 2018 was registered on 14.07.2018 against the petitioner and he was arrested by the Inspector of Police, F2 Chinthathiripet Police Station, Chennai for offence of cheating and misappropriation under Sections 420 and 406 IPC based on the cheque bearing No.002582, dated 19.09.2017. In this case, the cheque No.002584 is the basis for complaint which would clearly prove that the cheque was not given for any discharge of liability. When the Police complaint lodged and the petitioner arrested at that time point of time, the cheque could not have been issued. Since the petitioner was arrested and he was in a state of shock, unable to comprehend himself about the happenings, that is the reason the petitioner unable to collect evidence and putforth these facts during trial. Hence, the petitioner filed a petition under Section 391 Cr.P.C., before the lower appellate Court in Crl.M.P.No.6173 of 2023 in Crl.A.No.194 of 2022 and the lower appellate Court *vide* order, dated 27.04.2023 though recorded the contention of the petitioner as objections of the respondent in detail, but dismissed the petition, against which, the petitioner preferred a revision in Crl.R.C.No.1218 of 2023 before this Court and this Court by order, dated 27.07.2023 dismissed the revision. Hence, the petitioner's was denied of his valuable right of putting forth the best evidence available i.e., the arrest memo and FIR in Crime



No.192 of 2018 as a document, to probablize his defence and to give explanation that the cheque was not issued for any liability and it was filled up by the respondent and a false case foisted against him. The learned counsel submitted that the petitioner in the year 2017-18 was residing in Salem, only during July 2018 returned back to Thirupathur and started his business at R.C.Nagar, Thirupathur. In such circumstances, it cannot be stated that the statutory notice has been served to the petitioner. The respondent's admission is that he gave complaint to the Inspector of Police, F2 Chinthathiripet Police Station, Chennai on 14.07.2018 and on 19.09.2017 the petitioner issued cheques towards full and final settlement for sum of Rs.6,37,650/- on 19.09.2017 is not probable. Assailing the above points, the learned counsel prays for setting aside the judgments of the Courts below.

6.On the other hand, the learned counsel for the respondent filed typed set and submitted that the petitioner made false allegation against the respondent as though three cheques bearing Nos.002582, 002583 & 002584 were stolen by the respondent and one of the cheques presented in the above case. Though the petitioner claims his cheques stolen but neither informed the bank nor make any complaint to the Police and not even sent any notice to the respondent. Hence, it is the defence now taken by the petitioner. The



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case registered by the Inspector of Police, F2 Chinthathiripet Police Station, Chennai in Crime NO.192 of 2018 is for a different cause of action and the petitioner is attempting to camouflage both the Police complaint and the present complaint as one and the same. The respondent issued the cheque and not denied his signature. On the other hand, he belatedly took a stand as though the writings in the cheque and the signature are not that of him. Had the petitioner so sure and disputed the signature, he could have called his bank officials to produce the specimen signature card to prove that his signature is forged and further he could have examined himself as witnesses by filing petition under Section 315 Cr.P.C. But the petitioner has not done so. He further submitted that notice sent to the petitioner on the address known to the respondent, but notice delivered to the address at Thirupathur. Now, the petitioner claims that he was in Salem at relevant point of time and statutory notice could not have been served to that address not acceptable. Though the petitioner takes several defences, but not supporting with any evidence or materials. The points raised by the petitioner already raised during trial and before the lower appellate Court. Both the Courts rejected the petitioner's contention. The learned counsel for the respondent fairly submitted that the respondent not preferred any appeal challenging the judgment of modification passed by the lower appellate Court.



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7. In support of his submissions, the learned counsel for the respondent relied on the following decisions:

- *J. Devi Versus S. Gandhi in Crl.R.C.NO.25 of 2018, dated 28.03.2023.*
- *Nagpal Traders Versus Davinder Singh reported in (2017) 11 Supreme Court Cases 431.*
- *M/s. Kalamani Tex & Anr., Versus P. Balasubramanian reported in 2021 (2) SCC (Cri) 555.*

8. This Court considered the rival submissions and perused the materials available on record.

9. The trial Court given a finding that the signature in the cheque is that of the petitioner and convicted the petitioner. During the appeal before the lower appellate Court in Crl.A.No.194 of 2022, the petitioner filed a petition under Section 391 Cr.P.C., in Crl.M.P.No.6173 of 2023 in Crl.A.No.194 of 2022 to produce the arrest memo and FIR in Crime No.192 of 2018 as additional document to probablize his defence. The lower appellate Court vide order, dated 27.04.2023 dismissed the said petition and the same



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confirmed by this Court in Crl.R.C.No.1218 of 2023 vide order, dated 27.07.2023. The contention of the petitioner and the objection of the respondent recorded, the registration of the case by the Inspector of Police, F2 Chinthathiripet Police Station, Chennai in Crime No.197 of 2018, dated 19.07.2018 for offence under Sections 406 & 420 IPC is not denied and the FIR is based on the cheque bearing No.002582, dated 19.09.2017 for Rs.6,37,650/-. The petitioner was also arrested by the Police. The present cheque No.002584 issued for discharge of loan liability, on the same time presented on 20.09.2017, not honoured, hence, the complaint.

10.Strangely in this case, the cheque No.002584 is for identical sum of Rs.6,37,650/-. The respondent's case is that the petitioner gave hand loan on the same day in the present case also for the same amount. But after registration of First Information Report and arrest of the petitioner, what happened thereafter is not known. Considering these aspects, the lower appellate Court in Crl.A.No.194 of 2022 had confirmed the conviction by the trial Court but modified the jail sentence to fine sentence. Hence, this Court finds that the lower appellate Court had rightly done so. Admittedly, the judgment of the lower appellate Court, dated 18.08.2023 modifying the jail sentence to the fine sentence is not challenged by the respondent.



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11.In view of the above, this Court does not find any illegality or infirmity in the judgment, dated 18.08.2023 in Crl.A.No.194 of 2022 passed by the learned XXI Additional Sessions Judge, City Civil Court, Chennai and the same is hereby confirmed.

12.In the result, this Criminal Revision Case stands dismissed.

20.03.2024

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

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To

1.The XXI Additional Sessions Judge,
City Civil Court, Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore @ Allikulam.



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M.NIRMAL KUMAR, J.

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