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Crl.RC.No.37 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.RC.No.37 of 2023

D.Gangadhara Babu

... Petitioner

Versus

M.Krishnan

...

Respondent

PRAYER: Criminal Revision has been filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to set aside the judgment passed in Crl.A.No.4 of 2020 dated 11.12.2020 on the file of the learned VI Additional Sessions Judge, CCC, Chennai confirming the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court-II, Allikulam, Chennai-03 made in CC.No.1507 of 2018 dated 13.12.2019 and acquit the appellant herein from the charge under Section 138 of Negotiable Instruments.

For Petitioner : M/s.D.N.Dhurgasha

For Respondent : No appearance



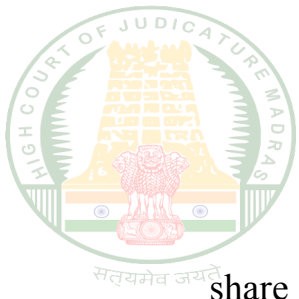
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ORDER

This criminal revision has been preferred against the judgment passed in Crl.A.No.4 of 2020 dated 11.11.2020 on the file of the learned VI Additional Sessions Judge, CCC, Chennai thereby confirming the conviction and sentence imposed by the trial court in CC.No.1507 of 2018 dated 13.12.2019 on the file of the learned Metropolitan Magistrate, FTC-II, Allikulam, Chennai for the offence punishable under Section 138 of NI Act.

2. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of NI Act alleging that the petitioner approached the respondent for short time business loan to the tune of Rs.10,00,000/-. He also promised to share profits to the respondent herein. Believing the said words, the respondent had transferred a sum of Rs.5,00,000/- on 15.06.2017 and another sum of Rs.5,00,000/- on 05.07.2017 through NEFT mode to the account of the petitioner. On receipt of the said amount, the petitioner shared profits to the tune of Rs.80,000/- till 13.07.2017. Thereafter, the petitioner failed to



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share the profits as if there was undertaking in favour of the respondent by the petitioner dated 05.10.2017 and also issued two cheques for a sum of Rs.5,00,000/- each dated 09.10.2017. On instruction, both the cheques were presented for collection and both were returned dishonoured with the endorsement 'funds insufficient'. After causing statutory notice, the respondent filed complaint.

3. On the side of the respondent, he had examined P.W.1 and marked Ex.P1 to Ex.P7. On the side of the petitioner, he had examined D.W.1 and D.W.2 and marked Ex.D1 to Ex.D4. On the basis of the oral and documentary evidence, the trial court found the petitioner guilty for the offences under Section 138 of NI Act and sentenced him to undergo simple imprisonment for a period of one year and also awarded compensation to the tune of cheque amount. Aggrieved by the same, the petitioner preferred appeal and the same was dismissed and confirmed the judgment of conviction and sentence imposed by the trial court, against which this criminal revision has been filed.



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4. The learned counsel for the petitioner would submit that both the cheques were obtained by way of coercion and threatening, that too in the police station. Both the cheques were issued as security. Therefore, both the cheques were not issued for any legally enforceable debt. The petitioner had rebutted the presumption under Section 138 of NI Act by examining DW1 and DW2 and marking Ex.D1 to Ex.D4. Even then, the trial court and the appellate court convicted the petitioner for the offence punishable under Section 138 of NI Act. The petitioner had shared profits till 13.07.2017. Thereafter, the petitioner failed to share profits as there was loss in the business due to a cyclone. In the meantime, the respondent lodged complaint. In the guise of enquiry on the complaint lodged by the respondent, the Inspector of Police, Choolaimedu Police Station detained the petitioner for several hours. During the enquiry, under threatening and coercion, two cheques were obtained from the petitioner. Therefore, both the cheques were not issued for any legally enforceable debt or liability. Further, a sum of Rs.10,00,000/- was remitted only during the course of business with the agreement of sharing profits in the ratio of 80:20. However, without



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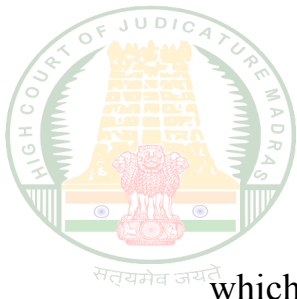
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considering the above facts and circumstances, both the courts have convicted the petitioner for the offence punishable under Section 138 of NI Act.

5. Though notice was served, no one appeared on behalf of the respondent before this Court today either in person or through pleader.

6. Heard, the learned counsel appearing for the petitioner and perused the records produced before this Court.

7. On perusal of records revealed that admittedly the petitioner received a sum of Rs.10,00,000/- through money transfer i.e. NEFT from the respondent on promise that the petitioner shall share profits in the ratio of 80:20. Though the petitioner shared profits till 13.07.2017 to the tune of Rs.80,000/-, thereafter he failed to share profits. Therefore, the respondent asked for return of money. On the said request, the petitioner had executed an undertaking in favour of the respondent and also issued two cheques for a sum of Rs.5,00,000/- each in order to settle the amount

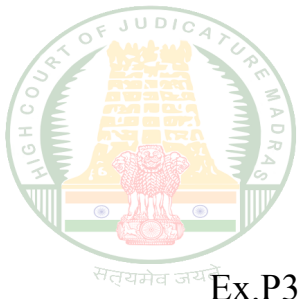


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which was received by the petitioner. On the instruction of the petitioner, the respondent had presented the cheques for collection. However, both the cheques were returned dishonoured for the reason 'funds insufficient'. Though the petitioner had raised specific ground that both the cheques were obtained in the police station under force and coercion, the petitioner failed to substantiate the same by way of oral or documentary evidence and it was categorically denied by the respondent during the cross examination.

8. The learned counsel for the petitioner raised ground on one hand that both the cheques were issued for security and on the other hand submitted that both the cheques were obtained forcibly in the police station. Even according to the petitioner, at the time of transferring the amount to the tune of Rs.10,00,000/- in favour of the petitioner, three cheques were issued by the petitioner as security. All these three cheques were not presented for collection. Subsequently on his request, the petitioner had issued two cheques while executing the aforesaid undertaking. Both the cheques were presented for collection. Therefore,



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Ex.P3 was not issued for security purpose. Even assuming that, it can be negotiated if there is liability at the time of presentation of cheques. Admittedly, on the date of the presentation of the cheques, the petitioner was liable to pay a sum of Rs.10,00,000/- to the respondent. Therefore, the respondent proved his case beyond any doubt and the petitioner was rightly convicted for the offence punishable under Section 138 of NI Act by the trial court and the same was rightly confirmed by the appellate court. Therefore, this Court find no grounds to interfere with the judgments rendered by the trial court as well as the appellate court and this criminal revision fails.

9. Accordingly, this criminal revision is dismissed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN. J,

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To

1.The learned VI Additional Sessions Judge,
CCC, Chennai

2.The learned Metropolitan Magistrate, Fast Track Court-II,
Allikulam, Chennai-03

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