IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.72 of 2015

B.Gopal ... Petitioner

vs.

C.Ravichandran ... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order of convition and sentence in C.C.No.21 of 2010 on the file of the learned Judicial Magistrate No.II, Krishnagiri, dated 29.04.2013, confirming the order dated 19.08.2014 in C.A.No.33 of 2013 on the file of the learned Principal Sessions Judge, Krishnagiri.

For Petitioner : Mr.C.Samivel

JUDGMENT

Material on record discloses that the petitioner has been convicted and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for three month, in C.C.No.21 of 2010 on the file of the learned Judicial Magistrate No.II, Krishnagiri, for an offence under Section 138 of the Negotiable Instruments Act. On appeal in C.A.No.33 of 2013, the learned Principal Sessions Judge, Krishnagiri, has confirmed the same, vide Judgment dated 19.08.2014. Being aggrieved by the above, the present revision is filed.

2.The case of the complainant is that the petitioner/accused is known to him for the past five years. On 02.06.2009, the petitioner/accused borrowed a sum of Rs.1,00,000/- from the complainant. He issued a post-dated cheque, bearing No.513326, dated 01.07.2009, drawn on ICICI Bank, Krishnagiri, in favour of the complainant, towards discharge of liability. Cheque was presented for collection in Indian Overseas Bank, Krishnagiri Branch, on 28.10.2009 and the same was returned with an endorsement “insufficient funds in the account”. Statutory notice was given to the petitioner on 05.11.2009 and it was received by the petitioner/accused on 07.11.2009. The accused has sent a reply notice with false averments. The accused did not repay the amount. Hence, the complaint filed by the respondent, has been taken on file in CC No.21 of 2010, on the file of the learned Judicial Magistrate No.II, Krishnagiri.

3. Before the trial Court, two witnesses have been examined, which includes PW1, the complainant. Ex.P.1 is the Cheque, dated 01.07.2009. Ex.P.2 is the Return Memo of ICICI Bank. Ex.P.3 is the legal notice of the complainant. Ex.P.4 is the reply notice of the petitioner/accused. Ex.P.5 is the acknowledgment Card for the statutory notice. On the side of defence, the petitioner/accused examined himself as DW1 and another witness has been examined as DW2. No documents have been marked on the side of the defence.

4. After considering the case of the parties and appreciating the oral and documentary evidence, the learned Judicial Magistrate No.II, Krishnagiri, found the petitioner as guilty of the offence under Section 138 of the Negotiable Instruments Act and imposed a sentence, to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months. As stated supra, the appellate Court confirmed the sentence.

5. Assailing the correctness of both the Judgments, Mr.C.Samivel, learned counsel for the petitioner/accused submitted that both the Courts below have failed to consider that no evidence has been adduced by the complainant to prove the borrowing of the said sum of Rs.1,00,000/-. According to him, the respondent has failed to prove that there was a legally enforceable and subsisting debt or other liability. Except the ipsi dixit testimony of PW1, no any document has been produced nor any witness has been examined to prove that there was any subsisting liability. Learned counsel for the petitioner further submitted that the Court below has failed to consider the contents of the Cheque and the signatures are in a different inks and that therefore, the Court below ought to have considered the probability of the defence case that the complainant had misused a blank cheque and filled the date and amount, to bring it under the ambit of Section 138 of the Negotiable Instruments Act.

6.Heard the learned counsel for the petitioner and perused the materials available on record.

7.During cross examination, the petitioner has admitted his signature in Ex.P1, Cheque. It is also admitted that he and the complainant have jointly done coconut business. According to him, in the course of said business, he had signed 10 blank cheques and left the same in the locker. During cross examination, he has candidly admitted that no police complaint was lodged regarding missing of 10 cheques. He has not informed the Branch Manager, ICICI Bank, Krishnagiri District. Though, petitioner/accused has deposed that no sooner the cheques were missing he has requested the bank to stop payment by way of a letter, no such document was produced. Branch Manager, examined as PW2, has not produced any document indicating stop payment.

8.Perusal of the impugned judgment, also shows that though, PW1, complainant, in his chief examination has stated that on 02.06.2009 the petitioner/accused borrowed a sum of Rs.1 Lakh and towards discharge of the said amount, he gave a cheque for Rs.1 Lakh in favour of the complainant bearing Cheque No.513326 dated 01.07.2009. Only a suggestion was put to the witness that the petitioner/accused did not borrow any amount. Thus, after analysing the evidence adduced by both parties, both the Courts below have concurrently held that the defence of the petitioner/accused that he had lost the cheques, has not been proved. On the defence that the complainant had not means to pay sum of Rs.1 Lakh, the learned Judicial Magistrate No.2, Krishnagiri, has observed that there was no suggestion by the defence to the complainant regarding means.

9.Section 118 of the Negotiable Instruments Act, 1881 reads as follows:

> "Presumptions as to negotiable instruments.—Until the contrary is proved, the following presumptions shall be made:—
>
> (a) of consideration.—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
>
> (b) as to date.—that every negotiable instrument bearing a date was made or drawn on such date;
>
> (c) as to time of acceptance.—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer.—that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements.—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp.—that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course.—that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

10.Though, without prejudice to the abovesaid contentions, the learned counsel for the petitioner/accused submitted that the sum alleged to have been borrowed, is only a security and that there was no legally enforceable debt, upon perusal of Ex.P3-Notice, averment made in the complaint and the oral and documentary evidence, the learned Judicial Magistrate No.2, Krishnagiri, has arrived at a categorical conclusion that Ex.P1, Cheque has been issued only for discharging the debt. Courts below have also held that after receiving the amount from the complainant, the petitioner/accused has issued a post dated cheque. Thus, it could be seen that though, the petitioner/accused, had put up a defence of lost of cheques and pleaded that the complainant had misused the blank cheque and subsequently filled up the date and amount, no complaint has been made to the police, nor he had substantiated his defence of intimating the bank to stop payment.

11.As stated supra, no document has been filed. As rightly observed that unless and otherwise the contrary is proved, holder of a cheque could fill up the same for the amount lent and if the cheque is dishonoured can prefer a complaint under Section 138 of the Negotiable Instruments Act, 1881. Perusal of the impugned judgment shows that the complainant has made out a case. On the contra, the petitioner/accused has miserably failed to substantiate the defence and rebut the statutory presumption in favour of the complainant. Impugned judgment do not call for any interference. Hence, the Criminal Revision Case is dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

mps

To

1.The Principal Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate No.II,
Krishnagiri.

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

1 cc to Mr.N.Sureka, Advocate, Sr. 7256

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