

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 475 of 2009
M.P.No.1 of 2009

Mohammed Ismail

.. Petitioner/Accused

Versus

1.Rajendran

State rep. by

2.The Public Prosecutor
Coimbatore.

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment dated 29.01.2009 in Crl.A. No. 163 of 2008 on the file of the learned I Additional District Sessions Judge, Coimbatore, confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate-I, Coimbatore, in S.T.R. No. 2075 of 2006, dated 27.05.2008.

For Petitioner : Mr.V.Murugesan

For Respondent-1 : Mr.Ananda Gomathy Sivakumar

For Respondent-2 : Mr.V.Arul, GA (Crl.side)

ORDER

This revision petition is filed against the order passed by the Courts below.

2. The brief facts of the case is as follows:

The petitioner/accused is alleged to have borrowed a sum of Rs.1,25,000/- as loan from the respondent/complainant and executed a promissory note in favour of the complainant on 02.02.2005. The accused promised to repay the same. When the complainant approached the accused for repayment, the accused alleged to have issued a cheque for a sum of Rs.1,10,000/-. When the complainant presented the cheque for collection, the same returned with an endorsement "Funds Insufficient". Though, the statutory notice dated 25.06.2006 sent by the complainant was received by the accused,

the accused neither sent any reply nor came forward to repay the amount. Hence, the respondent/complainant filed a case under Section 138 of Negotiable Instruments Act. The case was taken on file in STR.No.2075 of 2006 on the file of the learned Judicial Magistrate No.1, Coimbatore. After trial, the petitioner/accused was convicted for the offence under Section 138 of Negotiable Instruments Act by judgment dated 27.05.2006 in STR. No.2075 of 2006 and sentenced to undergo simple imprisonment for a period of 6 months and to pay a fine of Rs.1,000/- to the complainant, in default to undergo simple imprisonment for three months. Aggrieved by the same, the petitioner filed Crl.A. No.163 of 2008 and the learned I Additional District Sessions Judge, Coimbatore, has modified the same and the petitioner/accused was convicted under Section 138 of N.I.Act and sentenced him to pay compensation of Rs.1,25,000/- in default to undergo simple imprisonment for six months and was given three months time for payment, by judgment dated 29.01.2009, against which the present Criminal Revision Case is filed.

3.It is pertinent to note that at the time of admission of revision, in M.P.No.1 of 2015, the default sentence made operational upon the failure to pay compensation awarded was stayed by this Court vide order dated 06.05.2009.

4. Learned counsel appearing for the revision petitioner submitted that the court below without looking into the evidences properly had erroneously modified the conviction which is legally sustainable. It is mainly contented by the petitioner that he had not availed any loan from the respondent. He had only taken loan for constructing his house from one Jameel and issued four blank cheques to him. Though he had repaid the said loan, the said Jameel in collusion with the respondent had misused the cheque. It is also the case of the petitioner that on the date of issuance of the cheque, he was out of station. Hence, a false case has been foisted a case against him.

5.Learned counsel appearing for the first respondent/complainant would contend that only on proper verification of the documents and only after analysing the materials available on record, the learned I Additional District Sessions Judge, Coimbatore has modified the conviction and hence, seeks for dismissal of the revision petition.

6. Learned Government Advocate (Crl.side) would submits that if the petitioner/accused has not borrowed the said amount, he would have sent a reply to the statutory notice.

7. I have the submissions made on either side and have perused the materials available on record.

8. As rightly pointed out by the learned Government Advocate (Crl.side) if the accused has not borrowed the said amount and the cheque issued for some other purpose had been misused, he would have very well proved the same by examining the witnesses. However, the accused had not taken any steps to prove that the cheque was issued with regard to the housing loan transaction. Even if we take into account that the cheque has been issued for taking housing loan as per the averment, the accused had repaid the loan and it is not known why he had not taken back the cheque after repayment of the loan. It is seen that even, when the petitioner/accused was questioned under Section 313 of Cr.P.C., he has only averred that it is a false case.

9. The allegation against the accused is that he borrowed Rs.1,25,000/- for which a promissory note-Ex.P.1 was executed by him in favour of the complainant and pursuant to which, a cheque-Ex.P.2 was given to the complainant, which on presented returned for want of sufficient funds, thereby the accused committed the offence under Section 138 of Negotiable Instruments Act. Further more, it is seen that the petitioner/accused has not chosen to pay any amount till date. The petitioner/accused has been dragging on the matter. On a perusal of the entire evidence available on record, it is seen that the complainant examined himself as P.W.1 and he has produced both the cheque as well as the promissory note to prove the liability of the accused and there was transaction and the cheque and pronote were given by the accused to the complainant. Therefore, as rightly pointed out by both Courts below, when the petitioner/accused admits the signature in the cheque, the presumption as contemplated under Section 139 has to be raised in favour of the complainant and it is for the accused to rebut the presumption that the cheque was not issued to the complainant for a legally enforceable debt. But, for rebutting the presumption, neither oral nor documentary evidence has been produced. When the rebuttal is not let in by the petitioner by producing proper material evidence, in my considered opinion, both Courts below rightly convicted the accused by not accepting the theory put forward by the petitioner/accused. The Appellate Court has rightly modified the conviction to pay compensation of Rs.1,25,000/- in default to undergo simple imprisonment for three months. Therefore, I am of the view that only after analyzing the entire records, the Appellate Court has arrived at such a conclusion and I do not find any reason to interfere with such a finding rendered by the Court below.

10. In the result, the Criminal Revision Case is dismissed. The judgment passed by the Appellate Court dated 29.01.2009 stands confirmed. The petitioner/accused is directed to pay the entire compensation within a period of three months from today as awarded by the Appellate Court. On failure to comply with the condition as stipulated, it is always open to the Court below to act in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The I Additional District Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate-I, Coimbatore.
- 3.-Do- Thro Chief Judicial Magistrate, Coimbatore.
- 4.The Public Prosecutor, Coimbatore.
- 5.The Public Prosecutor, High Court Madras.
- +1cc to Mr. Anandagomathy, Advocate Sr.46132

Cr1.R.C. No.475 of 2009

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srg 6.10.2015

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