IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Criminal Revision Case No. 69 of 2010

R. Murugadoss ...Petitioner

Versus

P.K. Srinivasan ...Respondent

Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure against the Judgment dated 07.01.2010 made in Criminal Appeal No. 117 of 2009 on the file of III Additional Sessions Judge, Chennai confirming the Judgment dated 02.04.2009 passed in C.C. No. 14750 of 2006 on the file of the VIII Metropolitan Magistrate, George Town, Chennai - 600 001.

For Petitioner : No appearance

For Respondent : Mrs. D. Baskar

ORDER

The respondent herein has filed C.C. No. 14750 of 2006 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai contending that he was inducted as a tenant by Mr. Ramanathan, father of the accused in the second floor portion of the house bearing Door No.29 M, Kumarappa Mudali Street, Chennai. The respondent has paid a sum Rs.1,25,000/- to the father of the respondent towards lease amount. During May 2003, the father of the accused died and thereafter the petitioner demanded the respondent to vacate the premises. On 20.05.2006, the respondent vacated the premises and demanded for refund of the lease amount of Rs.1,25,000/-. Even before vacating the premises, the petitioner issued a cheque dated 05.06.2006 drawn on Standard Chartered Bank, Rajaji Salai Branch, Chennai in favour of the respondent and on presentation of the cheque, it was dishonoured for the reason insufficient funds. On the instruction of the petitioner, the respondent once again presented the cheque on 06.09.2006 and it was again dishonoured for the very same reason on 07.09.2006. Therefore, on 25.09.2006, the respondent issued a statutory notice calling upon the petitioner to pay the cheque amount. Even though the petitioner received the statutory notice, he has not chosen to issue any reply or paid the cheque amount. In such circumstance, the respondent has filed the complaint under Section 138 of The Negotiable Instruments Act before the trial Court.

2. The trial Court, on appreciation of the oral and documentary evidence, found the petitioner guilty of the offence punishable under Section 138 of The Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and also to pay a sum of Rs.1,25,000/- as compensation as contemplated under Section 357 (3) of Cr.P.C. Such conviction and sentence imposed on the petitioner was confirmed by the Appellate Court in the Criminal appeal No. 117 of 2009 filed by the petitioner. As against the concurrent decisions of the courts below, the present Criminal Revision Case is filed.

3. When the Criminal Revision Case was listed for hearing on 09.09.2015, there was no representation for the petitioner. Therefore, the Criminal Revision Case was directed to be posted today under the caption "for dismissal". Even today, there is no representation for the petitioner. Further, MP No. 1 of 2010 filed by the petitioner for suspension of sentence was listed on several hearings, but there was no representation made on behalf of the petitioner. Therefore, on 13.04.2010, MP No. 1 of 2010 was dismissed by this Court for default. The Criminal Revision Case is pending from the year 2010. As per the judgment of the Honourable Supreme Court reported in the case of [K.S.Panduranga vs. State of Karnataka] (2013) 3 SCC 721, even in the absence of the petitioner or respondent, this Court is empowered to deal with the matter on merits and dispose of the same. Accordingly, this Court is inclined to take up the above Criminal Revision Case and to dispose it of on merits.

4. In the grounds raised in the Criminal Revision Case on behalf of the petitioner, it is stated that the revision petitioner has disputed the signature in the cheque and therefore, he has filed M.P. No. 644 of 2008 in C.C. No. 14750 of 2006 under Section 73 of the Indian Evidence Act praying the trial court to send the disputed signature for comparision by an expert. The said petition was dismissed by the trial Court on the ground that on a mere comparision of the signature in the cheque with the admitted signature of the accused, it is clear that there is no variation in the signature and there is no need to send it for expert for comparision. According to the petitioner, even though he has not filed any appeal against

the order dismissing the MP No. 644 of 2008, it will not be a ground for convicting him for the offence under Section 138 of The Negotiable Instruments Act. It is further contended that the cheque in question was stolen by the respondent and filled up the amount in the cheque only to harass him. It is further stated that the revision petitioner has already settled the amount of Rs.1,25,000/- even prior to the respondent vacating the premises in question and only on receipt of the amount did the respondent vacated the premises. Therefore, it is contended that there is no liability, much less legal liability on the part of the petitioner to pay the cheque amount to the respondent. It is the specific contention of the petitioner that the signature in the disputed cheque was forged by the respondent and there is no obligation on his part to pay the cheque amount.

5. The learned counsel appearing for the respondent would vehemently contend that the revision petitioner has not issued a reply to the statutory notice sent by him. If the contention of the petitioner that the signature in the cheque was forged or the cheque was stolen by the respondent to harass him, the petitioner could have very well issued a reply notice and disputed his liability, but he has not chosen to do so. Further, the petitioner has not chosen to prefer an appeal as against the order passed by the trial Court dismissing the application filed under Section 73 of the Indian Evidence Act to compare the signature in the cheque. The cheque was returned by the bank not for variation in the signature of the holder of the cheque but for want of funds. If the contention of the petitioner that the signature in the cheque was forged, the bankers would not have entertained the cheque and returned it on the ground that there is variation in the signature. Therefore, the legal presumption is the cheque in question was issued by the petitioner towards a legally enforceable debt and liability. The courts below have properly analysed all the evidence made available before it and rightly convicted the petitioner for the offence under Section 138 of The Negotiable Instruments Act. Therefore, the learned counsel for the respondent prayed for dismissal of the Criminal Revision Case.

6. I heard the learned counsel for the respondent and perused the material records placed, including the orders passed by the courts below. A perusal of the orders passed by the trial Court would indicate that Ex.P1, cheque in dispute, was issued by the petitioner for Rs.1,25,000/- and it was dishonoured on its presentation for want of funds. The trial Court as well as the Appellate Court have recorded that the petitioner has taken inconsistent defence. It was pointed out by the courts below that originally, the petitioner pleaded that he has not issued the cheque at all, later in the petition

filed under Section 73 of the Indian Evidence Act, it was contended that the cheque was stolen by the respondent and the amount thereon as well as the signature were filled up by the respondent. As rightly pointed out by the courts below, if really the respondent had stolen the cheque in question, atleast the petitioner ought to have issued a reply notice to the statutory notice sent by the respondent and denied the issuance of the cheque. In the absence of any reply to the statutory notice, which was duly served on the petitioner, the legal presumption is that the petitioner has issued the cheque in question in favour of the respondent for a legally enforceable debt and liability. Further, as pointed out by the courts below, the petitioner has not chosen to prefer an appeal as against the order passed by the trial Court dismissing the application filed under Section 73 of the Indian Evidence Act to compare the signature in the cheque. In such circumstances, I do not find any reason to interfere with the orders passed by the Courts below.

7. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take appropriate steps as are necessary to secure the presence of the petitioner to undergo the period of sentence.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional Sessions Judge,
   Chennai.

2. The VIII Metropolitan Magistrate,
   George Town, Chennai.

3. -Do- Through The Chief Metropolitan Magistrate,
   Chennai.

1 CC to Mrs. D. Baskar, Advocate SR.No. 49787

Crl.R.C. No. 69 of 2010

KSJ (CO)
PSI (26.10.2015)