

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.542 of 2017 and
Crl.M.P.Nos.4832 & 4834 of 2017 and 17128 of 2018

K.Senthilkumar

... Petitioner

vs.

1. A.Ramesh
2. The State Rep. by
Public Prosecutor, Erode.

... Respondents

The Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the judgment dated 24.02.2017 passed in C.A.No.123 of 2016 on the file of the I Additional District and Sessions Court, Erode, confirming the judgment dated 04.06.2016 passed in S.T.C.No.460 of 2014 on the file of the Judicial Magistrate (Fast Track Court) No.1, Erode, by allowing the present criminal revision petition.

For Petitioner : Mr.K.Sudhakar - No Appearance

For respondent : Mr.M.Karthik for R1
- No Appearance

ORDER

The criminal revision has been filed against the concurrent judgment of conviction made by the Courts below for the offence under Section 138 of Negotiable Instruments Act (in short 'NI Act').

2 The petitioner is accused and 1st respondent is complainant. The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of NI Act, before the learned Judicial Magistrate (Fast Track Court No.1), Erode, which was taken on file in S.T.C.No.460 of 2014. The learned Magistrate, after trial, found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment dated 04.06.2016, convicted and sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple

imprisonment for a further period of 15 days. Aggrieved against the same, the petitioner has preferred an appeal in C.A.No.123 of 2016. The learned I Additional District and Sessions Judge, Erode, after hearing both the counsel, by judgment dated 24.02.2017, dismissed the appeal and confirmed the conviction and sentence made by the trial Court, against which, present revision has been filed.

3 It is seen from the records, on earlier occasions, when the matter was taken up for hearing, there was no representation for more than four hearings and lastly, the revision was dismissed by this Court by order dated 06.06.2017 for non appearance of the petitioner continuously and subsequently the petitioner has filed a petition to restore the revision. This Court, in order to give opportunity to the petitioner/accused to contest the case on merit, by order dated 28.03.2019 allowed the petition and restored the revision on file and had directed to post the matter on 01.04.2019 "for disposal". Today, i.e. 01.04.2019, when the matter is taken up for hearing there is no representation for the petitioner and also for the respondent. Therefore, this Court, as no other option, gone through the materials available on records and is decided to dispose of the case on merits.

4 The case of the first respondent/complainant is that the petitioner/accused had borrowed a sum of Rs.2,00,000/- for his urgent needs, and to discharge the same, issued a post dated cheque bearing No.749056 dated 19.08.2014, for a sum of Rs.2,00,000/-, and promised to pay interest at the rate of 12% p.a. The respondent/complaint presented the cheque for encashment, the same was returned as "funds insufficient". Hence the respondent/complainant issued a legal notice, for which the petitioner/accused neither sent any reply nor repaid the amount and therefore the respondent has filed a private complaint. The trial Court after considering all the materials placed on record and the arguments advanced on either side had rightly come to the conclusion that the petitioner found guilty of offence under Section 138 of NI Act and the lower appellate Court has also confirmed the conviction made by the trial Court, since it is well founded.

5 The defence taken by the petitioner/accused before the Court below is that the petitioner had borrowed a sum of Rs.2,00,000/- from the first respondent and other friends and at the time of lending money the respondent/complainant obtained blank cheque and promissory note from the petitioner. Thereafter, the petitioner had repaid a sum of Rs.1,50,000/- to the respondent, but the cheque and promissory note had not been returned by the petitioner. Now, the respondent filled the cheque, which has been given towards security and filed this

case against the petitioner, which does not amount to legally enforceable debt. The petitioner was convicted only based on the presumption and hence is liable to be dismissed.

6 This Court has carefully perused the materials placed on record.

7 The petitioner filed this revision against the concurrent judgment of conviction made by both the Courts below. The petitioner/accused admitted his signature and execution of cheque. He also admitted that there was money transaction and issued the subject cheque towards security. It is the contention of the petitioner/accused that he has repaid the amount, but, the respondent/complainant did not return the cheque and promissory note. This Court is of the view that when the petitioner/accused has settled the dues, it is for him to get back the documents, which has been given towards security and in this case the petitioner/accused has failed to do the same. Under these circumstances, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or probable defence, even by cross examining the witnesses. In this case, on reading of the entire materials placed on record, it reveal that the petitioner/accused has failed to rebut the presumption drawn in favour of the respondent/complainant and proved his plea of discharge or repayment of the amount mentioned in the cheque. In the absence of the same, this Court does not find any perversity in the judgment of conviction of both the Courts below and there is no merit and substance in the revision case.

8 In the result, the criminal revision case is dismissed. Consequently connected miscellaneous petitions are closed. Trial Court is directed to secure the accused to undergo remaining period of imprisonment, if any.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District and Sessions Court,
Erode.
2. The Judicial Magistrate,
(Fast Track Court) No.1, Erode.

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Kak(28/09/2019)