IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 11.09.2017)

(Pronounced on : 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.631 of 2011
and
M.P.No.1 of 2011

K.Thanveer Almas ...Petitioner/Accused - I

.. Vs ..

D.Rajzu Dugar
Rep. by its Special Power of
Attorney Agent,
B.Jagannathan ... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the judgment in C.A.No.33 of 2007 on the file of the Additional District and Sessions Judge-cum-Fast Track Court, Thirupattur, dated 19.04.2011 in partly dismissing the appeal in C.C.No.81 of 2006 on the file of the Principal District Munsif, Ambur dated 28.06.2007.

For Petitioner : Mr.Sharath Chandran
and Mr.A.V.Jayganesh

for Mr.V.Raghavachari
For Respondent : Mr.T.R.Ravi

ORDER

The revision petitioner herein is the first accused in C.C.No.81 of 2006 on the file of the learned Principal District Munsif, Ambur, and he was convicted by the learned Principal District Munsif, for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for two years and he was also directed to pay the cheque amount of Rs.2,00,000/- to the complainant as compensation. Further, in the said calender case, the second accused was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for two years and to pay a fine of Rs.5000/- and in default, to undergo simple imprisonment for six months.

2. As against the said conviction and sentence, the revision petitioner herein, who is the first accused and the second accused have preferred an appeal in Crl.A.No.33 of 2007 and the learned Additional District and Sessions Judge-cum-Fast Track Court, Thirupattur, allowed the appeal only in respect of the second accused and acquitted her and dismissed the appeal insofar as the first accused is concerned by confirming the order of conviction and sentence passed by the trial Court. Challenging the said order, the first accused had preferred the above Criminal Revision Case before this Court.

3. Learned counsel appearing for the revision petitioner/A.1 would contend that the private complaint filed under Section 200 of Cr.P.C. through Special Power of Attorney Agent for the dishonour of cheque is not maintainable, since he has no personal knowledge about the borrowal amount and there is no pre-existing liability capable of being enforced legally and both the Courts below have committed an error in convicting the revision petitioner/A.1 under Section 138 of the Negotiable Instruments Act and hence, the learned counsel seeks to allow the criminal revision case and to set aside the order of conviction and sentence passed by both the Courts below.

4. Learned counsel appearing for the respondent/complainant would contend that as the necessary factors have been proved in the manner known to law, both the Courts below have concurrently come to the conclusion that the respondent herein/private complainant is entitled for presumption under the Negotiable Instruments Act and as the revision petitioner/accused had failed to discharge the onus of proof on him, both the Courts below have negatived the case and hence, the judgments passed by both the Courts below do not warrant any interference by this Court and prayed for dismissal of the revision case.

5. Points for determination are

[i] Whether the order of conviction is sustainable in law?

[ii] Whether the sentence awarded is excessive or not?

6. The respondent herein, who is the private complainant, through his Special Power of Attorney Agent, has presented the complaint alleging that the revision petitioner herein along with his wife/A.2 had taken a sum of Rs.2 lakhs as hand loan and for which, they have executed a cheque dated 07.12.2005 and when the said cheque was presented, the same was returned

due to "insufficient funds". After issuing statutory notice, the complainant had instituted the private complaint for an offence punishable under Section 138 of the Negotiable Instruments Act.

7. It is seen from the records that the revision petitioner/A.1 along with his wife/A.2 have taken a suggestive case before the trial Court that the private complainant has not entered the witness box and only his Power of Attorney has deposed on his behalf and there is a difference in the ink between the signature and the details of the presence therein and the address of the accused has been affixed in a format seal. Further, though the complainant, in his cross examination has undertaken to produce the documents relating to his daily income and expenditure and his bank account and also income tax receipts, he has not produced the same by filing a petition under Section 91 of Cr.P.C. Further, according to the revision petitioner, an adverse inference has to be drawn against the complainant and there is no pre-existing legally enforceable debt. It is seen from the records that on behalf of the complainant viz., Rajzu Dugar, his Power of Attorney B.Jagannathan has presented the petition and deposed as P.W.1 and marked Exs.P.1 to P.6. On the side of the accused, no witness was examined and no document was marked.

8. On a combined reading of the oral evidence of P.W.1 coupled with the documentary evidence of Ex.P.2-cheque, both the Courts below have come to a conclusion that the private complainant has made out necessary ingredients to raise presumption in his behalf as contemplated under Section 139 of the Negotiable Instruments Act.

9. After perusing those documents and the evidence, this Court is unable to take a different view as expressed by both the Courts below and thus, it is for the revision petitioner/A.1 to discharge the onus of proof on him. According to the learned counsel for the revision petitioner/A.1, there is no pre-existing legally enforceable debt. However, it appears from the cross-examination of P.W.1 that he has given a categorical evidence detailing the day and the manner and for the purpose of which he has lent the loan and for which, the revision petitioner gave the cheque in issue. In the absence of any other contradiction being elucidated in connection with the borrowal of the said amount and issuance of the cheque in question, both the Courts below have rightly come to a conclusion that the private complainant/respondent herein is entitled for presumption and in view of the clear and cogent evidence of P.W.1, this Court is of the considered view that for the hand loan given by the private complainant during November 2005, the cheque in issue has been given and hence, the legally enforceable debt is in

existence for the issuance of the cheque and neither the revision petitioner nor his wife, who was arrayed as second accused before the trial Court, not disputed and the revision petitioner has to dislodge the onus of proof. Taking into consideration the fact that the revision petitioner herein, who is arrayed as A.1 alone is liable under Section 138 of the Negotiable Instruments Act, the Lower Appellate Court has correctly passed an order acquitting the second accused, who is wife of A.1 and rightly fixed the liability upon the revision petitioner herein.

10. The last contention raised by the learned counsel for the revision petitioner is that though the signature of the petitioner herein is an admitted one, the contents of the cheque were written in different ink and the said plea has been negatived by both the Courts below on the ground of Section 20 of the Negotiable Instruments Act treating the cheque in issue is inchoate document empowering holder to fill up the cheque. It remains to be stated that the revision petitioner herein has not taken any steps to probablise his suggestive case as held by both the Courts below and hence, the judgments of both the Courts below are well considered and well merited which do not warrant any interference by this Court.

11. Yet another point that was raised by the learned counsel for the revision petitioner is that in respect of the petition filed under Section 91 of Cr.P.C. to produce the day-to-day account maintained by the respondent herein, he has failed to produce the same does not hold good, in view of the admission of the first accused of his signature in the cheque and hence, viewing from any stand point, I find no reason to interfere with the well considered order passed by the Lower Appellate Court in convicting the revision petitioner herein/A.1.

12. In fine, all the plea raised by the learned counsel for the revision petitioner touching upon the discharge of onus of proof and in view of the evidence demonstrating existence of the legally enforceable debt and the admission of the signature of the drawer in the cheque and the answer elucidated in the examination of P.W.1 regarding the pre-existing liability which is legally enforceable, this Court has no hesitation to come to a conclusion that the revision petition is devoid of merits and the order passed by the Lower Appellate Court in acquitting the second accused/wife of A.1 and convicting the revision petitioner/A.1 by confirming the conviction and sentence passed by the trial Court is sustainable in law and the sentence awarded by the trial Court is found to be in proportionate to the amount involved in the cheque and accordingly, the sentence awarded by the trial Court cannot be termed as excessive.

13. In the result, this Criminal Revision Case is dismissed and the conviction and sentence passed by the trial Court as modified by the Lower Appellate Court is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Additional District and Sessions Judge-cum-Fast Track Court, Thirupattur.

2. The Principal District Munsif, Ambur.

+ 1 cc to M/s. T.R. Ravi, Advocate Sr.89674
+ 1 cc to M/s. V. Raghavachari, Advocate Sr.88943

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GMI(CO)
EU(22/02/2018)