IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2017

(Orders reserved on 20.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.972 of 2011

T.S.Sakthivel ... Petitioner

.. Vs ..

P.Kuppusamy ...Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., against the judgment dated 31.01.2011 made in C.A.No.63 of 2009 on the file of confirming the conviction, sentence and fine passed in order dated 8.8.2009 made in C.C.No.707 of 2005 on the file of the Judicial Magistrate Court at Tiruchengode.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondent : Mr.K.Venkata Subban

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ORDER

The accused has preferred this Criminal Revision Case under Sections 397 r/w. 401 of Cr.P.C., against the judgment dated 31.01.2011 made in C.A.No.63 of 2009 on the file of Principal Sessions Judge at Namakkal, confirming the conviction, sentence and fine passed in order dated 8.8.2009 made in C.C.No.707 of 2005 on the file of the Judicial Magistrate Court at Tiruchengode.

2. The accused is the revision petitioner herein.

3. This Criminal Revision came to the filed by the unsuccessful appellant/accused as against the judgment passed by the learned Principal Sessions Judge dated 31.01.2010 in Criminal Appeal No.63 of 2009 confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate, Tiruchengode dated 08.08.2009 in C.C.No.707 of 2005.

4. The facts relevant to the present revision is as follows:-

According to complainant, on 25.04.2003 the revision petitioner/accused had borrowed a sum of Rs.5,50,000/- (Rupees Five Lakhs Fifty Thousand only) from the respondent on 25.04.2003, for which he executed a demand promissory note and agreed to repay the same with interest at Rs.1.50/- per Rs.100/-. Inspite of repeated demands the revision petitioner/accused did not repay the promissory note amount. However, the revision petitioner/accused had issued a cheque of Tamil Nadu Mercantile Bank Ltd., bearing No.249326 drawn on 12.08.2005 for Rs.4,00,000/- (Rupees Four Lakhs only) towards the part payment of promissory note debt. With instruction of revision petitioner/accused, the said cheque was presented in the respondent/claimant bank on 19.10.2005 which was returned as "Exceeds Arrangements". The revision petitioner/accused, knowing fully well that he has no sufficient funds in his Bank-account.

5. The learned counsel for revision petitioner/accused invited the attention of this Court pertaining to the ingredients under Section 138 of Negotiable Instruments Act and also the presumption arising under Section 139 of Negotiable Instruments Act. In this regard, he has relied a Judgment of Supreme Court in the case of Krishna Janardhan Bhat Vs.Dattatraya G.Hegde reported in 2008(1) CTC 433. The Supreme Court, in the said judgment has observed the three ingredients of Section 138 of Negotiable Instruments Act and further emphasized therein that Section 139 merely raised presumption that cheque was drawn in discharge of debt or other liability and presumption cannot be that there is legally enforceable debt.

6. Admittedly, the revision petitioner/accused did not deny the signature found in the cheque in question. The stand taken by the revision petitioner/accused is that he has received only a sum of Rs.1,00,000/- (Rupees One lakh only) for which five cheques have been issued, out of which one cheque has been filled up and the present case came to be filed. Whereas, the cheque in question seems to have issued for Rs.4,00,000/-

(Rupees Four lakhs only). Once the signatory of the cheque did not dispute his signature found in the instrument then the presumption under Section 118 of Negotiable Instruments Act will come into play. As already stated the respondent/accused did not deny the signature found in the cheque in question. Therefore, both the Courts below have rightly came to a conclusion that the cheque in question was issued by the respondent/accused for Rs.4,00,000/- (Rupees Four lakhs only)

7. Another contention of the revision petitioner/accused that there is no legally enforceable debt on the date of cheque in question as the alleged promissory note dated 25.04.2003 is a forged one and no consideration was passed thereon. It is the case of the respondent/complainant is that the revision petitioner/accused had borrowed a sum of Rs.5,50,000/- (Rupees Five lakhs fifty thousand only) from the respondent/complainant on 25.04.2003, for which he had executed on demand promissory note. In support of his case the respondent/claimant has produced the original promissory before the Court and also examined the Scribe as a witness, thereby established the execution of the promissory note dated 25.04.2003. On the other hand, the revision petitioner/accused did not adduce any contrary evidence to disprove the contents of the promissory note dated 25.04.2003.

8. In such circumstances, both the Courts below have concurrently found that the promissory note dated 25.04.2003 was executed by the revision petitioner/accused. Once the execution of an instrument is established, the presumption under Section 118 of Negotiable Instruments Act is that the said instrument was supported by consideration. That apart, the oral and documentary evidence adduced before the trial Court would clearly expose the fact that there was earlier transactions taken place between the revision petitioner/accused and respondent/claimant. Therefore, it is crystal clear that the cheque in question was issued only towards the partial payment of promissory note debt as rightly contended by the learned counsel for respondent herein.

9. As already observed, the case of the respondent/complainant is that the revision petitioner/accused had issued the cheque in question only towards the partial payment of promissory note debt, which was clearly supported by oral and documentary evidence. The revision petitioner/accused has miserably failed to establish his case.

10. In view of the oral and documentary evidence, the trial Court has rightly pronounced the judgment of conviction and the same was affirmed by the appellate Court.

11. In view of the discussion in the presiding paragraphs, this Court finds that both the Courts below have rightly held that the respondent/private complainant is entitled for presumption under the Negotiable Instruments Act and the revision petitioner having admitted his signature the honors of proof is filing false upon him. However, as he failed to discharge honors of proof on his shoulders, both the Courts below have come to the concurrent conclusion that the revision petitioner/accused failed to probablize his case and the said finding rendered both the Courts below does not suffer from any irregularity or illegality warranting interference by this Court and conviction and sentence passed by both the Courts below are in accordance with law and same is sustainable in law and this petition is devoid of merits and accordingly, this Criminal Revision Petition is dismissed.

13.12.2017

Index : Yes
Internet : Yes
nvi

To

1.The Principal Sessions Judge at Namakkal,
2. The Judicial Magistrate Court at Tiruchengode.
3. The Public Prosecutor,
High Court of Madras.

RMT.TEEKAA RAMAN, J.
nvi

Order in
Crl.R.C.No.972 of 2011

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