

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.479 of 2015
and
Crl.M.P.No.2 of 2015

K.K.Rajan ... Petitioner
//vs//
M.Gokulnathan ... Respondent

Prayer: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the judgment of C.A.No.79 of 2014 dated 19.02.2015 on the file of II Additional Sessions Judge, Salem, confirming the judgment of STC No.1308 of 2012 dated 30.05.2014 on the file of Judicial Magistrate III, Salem.

For Appellant : Mr.R.Nalliappan
For Respondent : Mr.K.Bakri Narayanan

O R D E R

The petitioner is the sole accused in S.T.C.No.1308 of 2012 on the file of the Judicial Magistrate No.III, Salem. He stood charged for an offence under Section 138 of Negotiable Instruments Act. The trial Court, by judgment dated 30.05.2014, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for 6 months and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for one month. Challenging the conviction and sentence, the petitioner had preferred an appeal in C.A.No.79 of 2014 on the file of the II Additional Sessions Court, Salem. The lower appellate court, confirmed the conviction and sentence and dismissed the appeal, by a judgment dated 19.02.2015. Now, challenging the same, the present revision has been filed.

2. The case of the complainant, in brief, is as follows:-

P.W.1 is the complainant in this case. According to him, the petitioner/accused borrowed a sum of Rs.4,00,000/- from the complainant, for his urgent family and business purposes and agreed to repay the same together with interest at the rate of 24% per annum. When P.W.1 demanded the money back, in order to discharge the liability, the accused issued a cheque dated

20.09.2012, for a sum of Rs.4,00,000/- drawn on Karnataka Bank, Salem, when it was presented for collection with the drawee bank on the same day, the same has been returned for the reason "Exceeds Arrangements". Thereafter, he had issued a statutory legal notice calling upon the petitioner to repay the cheque amount. For that, the petitioner had sent a reply stating that while he was taking tea in a Tea Stall, he misplaced the cheque and at that time, the respondent/complainant, who was sitting near to him in the Tea Stall might have taken the cheque and utilized the same against him, and there is no legal liability and he has denied the liability. In the above circumstances, he filed a private complaint against the petitioner for an offence under Section 138 of Negotiable Instruments Act.

3. Having considered the above, the trial Court framed a charge against the petitioner for an offence under Section 138 of Negotiable Instruments Act and the accused denied the same. In order to prove his case, on the side of the complainant, he had examined himself as P.W.1 and also marked the original cheque, return of memorandum, legal notice, and reply notice as Ex.P.1 to Ex.P.4.

4. According to P.W.1, the petitioner had received a sum of Rs.4,00,000/- as hand loan for urgent family and business purpose and promised to repay the same with interest at the rate of 24% per annum. When P.W.1, demanded the money, the petitioner/accused in order to discharge of his liability, issued a cheque for part payment of the debt. When P.W.1 presented the same with the drawee bank, the same was returned as "Agreement Exceeded" and after following all necessary legal formalities, he filed a private complaint against the petitioner and in order to prove his case, he has also marked the original cheque and the return memo sent by the bank and the legal notice issued by him and also reply sent by the petitioner.

5. The petitioner did not examine any witness nor mark any document on his side.

6. Having considered all the above materials, the trial Court convicted the petitioner as detailed in the first paragraph of this judgment. Aggrieved against the same, the petitioner filed an appeal in C.A.No.79 of 2014 on the file of the II Additional Sessions Court, Salem and the lower appellate court confirmed the conviction and sentence and dismissed the appeal by judgment dated 19.02.2015. Challenging the same, the present revision has been filed.

7. Heard Mr.R.Nalliappan, learned counsel appearing for the revision petitioner and Mr.K.Badri Narayanan, learned counsel appearing for the respondent and perused the materials

available on record carefully.

8. The only defence of the petitioner was that he had lost cheque 3 years before the date of cheque, while he was taking tea in a Tea Stall and at the time, the respondent/complainant, who was sitting near to him, might have taken the cheque and misused the same. However, the petitioner admitted his signature on the cheque. In the above circumstance, the initial presumption under Section 139 of the Negotiable Instruments Act, would operate. Even though it is a rebuttable presumption, such presumption could be rebutted by raising a probable defence.

9. In the instant case, except stating in the reply that the petitioner has lost his cheque in a tea stall, which might have been used by the complainant, there is no material available to raise the initial presumption. Apart from that even the defence raised by the petitioner/accused that he lost a signed cheque in a tea stall 3 years prior to the occurrence is also not believable. Since the petitioner failed to raise initial presumption, it can only be presumed that the cheque has been issued to discharge the legally enforceable liability. The Court below considering all the materials rightly convicted the petitioner and I find no illegality or irregularity in the judgment of the Court Below.

10. So far as the quantum of punishment is concerned, the learned counsel for the petitioner submitted that the petitioner is a poor man and he is the sole bread winner of the family and he has a big family to maintain. Considering the above mitigating circumstances, the court is of the view that sentencing the petitioner to undergo simple imprisonment for 2 months would meet the ends of justice.

11. In the result, the Criminal Revision is partly allowed and the conviction of the petitioner under Section 138 of the Negotiable Instruments Act stands confirmed and the sentence imposed on him is modified and he is sentenced to undergo simple imprisonment for 2 months and to pay a fine of Rs.2000/-, in default, he shall suffer simple imprisonment for a further period of one month. The period of detention/sentence already undergone by the petitioner is directed to be set off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

mrp

To

1. The III Additional Sessions Judge,
Salem.

2. The Judicial Magistrate No.III,
Salem.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.42873

+1cc to Mr.T.Dharani, Advocate SR.No.43180

GN(04/12/2017)

Cr1.R.C.No.479 of 2015



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