

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.06.2017

CORAM:

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Criminal Revision Case No.1184 of 2013

V.Karthikeyan

... Petitioner

Vs

T.Manoharan

... Respondent

Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code against the judgment made in Criminal Appeal No.9 of 2013 dated 27.06.2013 passed by the III Additional District and Sessions Court, Poonamallee confirming the judgment made in C.C.No.21 of 2011 dated 22.01.2013 by the learned Judicial Magistrate, Ambattur, convicting the petitioner for an offence under Section 138 of the Negotiable Instruments Act 1881 and modifying the sentence imposed from simple imprisonment for one year to 3 months and directing the petitioner to pay to the respondent a sum of Rs.3,00,000/- as compensation within a period of two months i/d to undergo simple imprisonment for 3 months.

For Petitioner : Mr.C.Rajaguru for
M/s S.Sathia Chandran

For Respondents: I.Jesu.

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O R D E R

Aggrieved over the conviction and sentence of simple imprisonment of 3 months and to pay compensation of Rs.3,00,000/- under Section 138 of the Negotiable Instruments Act, the present revision has been filed by the accused.

2.The brief facts of the complainant's case is as follows:-
The accused borrowed from the complainant a sum of Rs.3,00,000/- on 03.03.2010 for family necessities and agreed to pay the same within two months. The accused also issued a cheque-Ex.P1 dated 10.05.2010 for a sum of Rs.3,00,000/-, drawn on Indian Overseas Bank Limited, Kumbakonam. When the complainant presented the above cheque for encashment on 30.08.2010, through his banker,

the State Bank of Travancore, Mogappair Branch, Chennai, the same was dishonoured for the reasons insufficiency of funds vide Memo-Ex.P2 dated 08.09.2010. Hence, the complainant issued a legal notice-Ex.P3 dated 30.09.2010 demanding the amount from the accused and the same was received by the accused as per the acknowledgment-Ex.P4. Despite service of notice, the accused did not repay the amount. Hence, the complainant preferred a complaint against the accused for the offence under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate, Ambattur on the basis of the sworn statement recorded from the complainant, taken cognizance of the crime under Section 138 of the Negotiable Instruments Act in C.C.No.21 of 2011.

3.It is the case of the accused that he has borrowed Rs.40,000/- from his friend one Rajarathinam of Kumbakonam and for the security of the loan amount, he handed over a cheque to him at the relevant time. He has already repaid the above amount to the said Rajarathinam and requested to hand over the cheque and pronote given by him. Hence, it is the contention of the accused that the above cheque has been misused by the complainant to file the complaint against him.

4.During the trial, on the side of the Complainant he himself examined as P.W.1 and marked four documents as Exhibits P1 to P4. Ex.P1 is the cheque dated 10.05.2010, issued by the accused for a sum of Rs.3,00,000/-; Ex.P2 is the Return Memo; Ex.P3 is the legal notice issued by the complainant dated 30.09.2010; Ex.P4 is the Acknowledgment. On the side of the accused, he himself examined as D.W.1 and marked the reply notice as Ex.D1.

5.Based on the evidence as well as the entire materials, the learned trial Court found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo Simple Imprisonment for one year and directed the him to pay compensation of Rs.3,00,000/- to the complainant under Section 357 of Cr.P.C., within two months from the date of judgment and in default to undergo 3 months of Simple Imprisonment.

6.Aggrieved by the conviction and sentence imposed by the learned trial Court, the accused preferred appeal before the III additional District and Sessions Judge, Poonamallee. The learned appellate Court after perusing the entire materials, confirmed the conviction and sentence imposed by the trial Court under Section 138 of the Negotiable Instruments Act against the accused, modified the sentence of one year simple imprisonment to three months and dismissed the appeal. Aggrieved by the same, the present revision came to be filed.

7.The main contention of the learned counsel for the Revision Petitioner is that the cheque is not supported by any consideration. Further, there is no privity of contract between the complainant and the accused and there are materials to dislodge the presumption attached to the cheque. Hence, prayed for setting aside the conviction and sentence imposed by the trial Court and modified by the appellate Court, by allowing the revision.

8.On the other hand, it is the contention of the learned counsel for the respondent that P.W.1/accused has categorically admitted the nature of transaction and the issuance of cheque by him is not denied and the accused being an advocate by profession is not a layman, absolutely there is no material on record to show that there is no privity of contract between the parties.

9.In the light of the above submissions, now the point that arises for consideration is:-

Whether the accused has brought out any materials and probabilities to discharge the presumption attached to the cheque?

10.It is the case of the complainant that the accused borrowed a sum of Rs.3,00,000/- as hand loan from the complainant on 03.03.2010 and handed over the cheque dated 10.05.2010 and also agreed to repay the amount within two months. However, he failed to repay the amount, the cheque issued by him was presented for encashment and the same was dishonoured. Return Memo-Ex.P2 clearly shows that the cheque was dishonoured for insufficiency of funds. The complainant has also issued a legal notice-Ex.P3, which was also received by the accused. Maintenance of the account and issuance of the cheque is not denied by the Revision Petitioner. The only contention of the Revision Petitioner is that he has borrowed a sum of Rs.40,000/- from his friend to whom he has issued the cheque-Ex.P1. Therefore, the present complaint is not maintainable. Such contention of the accused cannot be sustained for the simple reason the accused is not a layman. He is an advocate by profession as per his own evidence. If he had issued the cheque only to his friend Rajarathinam for the security of the amount borrowed by him, he would have examined the said Rajarathinam. But he has not examined the said Rajarathinam. Therefore, mere surmises and conjunctions suggested to the witness during the evidence is not sufficient to dislodge the legal presumption attached to the cheque under Section 139 and also under Section 118 of the Negotiable Instruments Act. Once the issuance of the

cheque is established and account maintained by the accused also established, it is for the accused to dislodge the legal presumption either by direct evidence or by circumstances in nature to dislodge the legal presumption attached to the cheque.

11. On a perusal of the entire evidence, this Court does not find any materials even on remote to dislodge the legal presumption attached to the cheque. Hence, this Court is of the view that the judgment rendered by the Courts below does not require any interference. Accordingly, the judgment rendered by the III Additional District and Sessions Court, Poonamallee confirming the judgment made in C.C.No.21 of 2011 dated 22.01.2013 by the learned Judicial Magistrate, Ambattur, convicting the petitioner for an offence under Section 138 of the Negotiable Instruments Act and modifying the sentence imposed from simple imprisonment for one year to 3 months and directing the petitioner to pay to the respondent a sum of Rs.3,00,000/- as compensation, does not require interference. Accordingly, the Criminal Revision is dismissed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

gr.

To:

1.The III Additional District and Sessions Judge,
Poonamallee.

2.The Judicial Magistrate, Ambattur

3.Thro'The Chief Judicial Magistrate, Tiruvallur.

+1cc to Mr.I.Jesu, Advocate sr.41142

CrI.R.C.No.1184 of 2013

sj(co)
ss(23/6/2017)

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