

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.07.2018

Pronounced on :26.09.2018

Coram:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Criminal Revision Case No.1042 of 2012

E.Ravichandran .. Petitioner

/versus/

R.Shanmughasundaram .. Respondent

Criminal Revision Case is filed under Section 397 and 401 of the Criminal Procedure Code against the judgment of the learned Principal District and Sessions Judge of Coimbatore, dated 11.07.2012 in CrI.A.No.76 of 2012 confirming the judgment of the learned Judicial Magistrate, Fast Track at Magistrate Level II, Coimbatore in C.C.No.202 of 2011(STC No.583 of 2009-J.M.No.VII, Coimbatore) dated 20.02.2012.

For Petitioner :Mr.V.Nicholas

For Respondent :Mr.K.S.Karthik Raja

O R D E R

The unsuccessful accused is the revision petitioner in this case.

2.The respondent herein filed a petition in STC No.583 of 2009 before the Judicial Magistrate No.VII, Coimbatore for the offence under Section 138 of Negotiable Instrument Act in connection with the cheque for a sum of Rs.4,50,000/-. After contest by the accused, conviction has been laid. On appeal, the same has been confirmed and hence, the Criminal Revision Case is filed.

3.The learned counsel for the revision petitioner would contend that both the Courts below have not properly appraised the suggestive case of the accused. The complainant was running BR Finance and VRS Finance and the accused family members are depositors and interest was paid by the complainant-company to the accused family and for the loan transaction, they had given blank cheques and pro-notes and the same were misused. They have filed the receipts (Exs.D2 and D3) issued by the finance-company and orders passed by the TNPID Court and the High Court, which were marked as Exs.D5 and D6.

4.Per contra, the learned counsel for the respondent made his submission in support of the order passed by the trial Court.

5.Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the records.

6.Before the trial Court, the respondent-complainant himself was examined as PW-1 and marked Ex.P1 to Ex.P6. On the side of the defence, the revision petitioner himself examined as DW1 and marked Exs.D1 to D6.

7.From the evidence of PW-1 regarding the issuance of the cheque and exchange of the legal notice and filing of the complaint, it appears that during the cross examination of PW-1, the suggestive case of the accused was that firstly, the cheque number has not been mentioned in the legal notice nor in the complaint; secondly, the cheques and pro-notes were obtained as blank in the finance-concern run by the complainant's wife. Thirdly, the accused is a subscriber in the finance company run by the wife of the complainant and these cheques were kept in the finance company, which were given as a collateral security and the same were misused for filing the false case against the petitioner.

8.At this juncture, it is relevant to mention that firstly, in Ex.P6 - reply notice, dated 14.07.2009, the accused has disputed that the cheque in issue was lost during the travel along with eight other cheques and therefore, he had closed his bank account. Secondly, he has not borrowed the amount from the complainant nor issued any cheque to the complainant in this case. Thirdly, while borrowing amount from the finance company concerned, he had executed a blank promissory note and the same is now time barred.

9.Now, my attention was drawn to the defence as projected by DW1 in the witness box to the effect that the cheque in issue was misplaced in the office of the finance company. So, he had closed his bank account on 25.08.2004 itself and only a promissory note was received for the chit with signature alone when he has withdrawn the maturity amount from the finance company. Thirdly, the present cheque was misplaced without signature and the signature does not belong to the accused.

10.The learned counsel for the revision petitioner has also contended that when the cheque number is neither in the legal notice nor in the complaint, the trial Court ought to have disbelieved the case of the respondent herein. He further stated that the petitioner has closed the bank account in the year 2004 itself, whereas the cheque was returned only in the year 2009 and therefore, the entire case of the prosecution has to be disbelieved.

11.This Court has considered the said contention raised by the the learned counsel for the revision petitioner.

12.On perusal of Ex.P4-legal notice, it does not disclose any cheque number nor the same is disclosed in the complaint. However, it is seen that in paragraph No.4 of Ex.P6-reply notice, the revision petitioner himself has specifically averred that nine cheques were lost in travel. Though the accused is entitled to take different stands, however, in cross- examination of PW-1, the signature in the cheque in issue was not disputed and therefore, both the courts below have rightly come to the conclusion that having admitted the signature found in the cheque, the private complainant is entitled for presumption under Section 138 of Negotiable Instrument Act and secondly, burden casts upon the accused to discharge the onus. However, the petitioner has failed to probablise the suggestive case and not rebutted the presumption as stated above.

13.It remains to be stated that when PW-1 was in the witness box, there was no suggestion regarding the disputed signature. However, it appears that on the legal advice he has moved the said stand and accordingly, it was deposed in the chief-examination of DW1 that he has given only a promissory note not the cheque, assumes significance. Therefore, both the courts below have categorically come to the conclusion that the respondent is entitled for statutory presumption and the petitioner has failed to rebut the presumption and as such, awarded the conviction and sentence under Section 138 of Negotiable Instrument Act. In the absence any valid reason and in the absence of any infirmity, I do not find that the order of the Courts below warrants any interference at the revision stage.

In this view of the above discussion, the Criminal Revision Case fails and the same is hereby dismissed.

26.09.2018

Index:yes/no

Internet:yes/no

ari

To

- 1.The Principal District and Sessions Court, Coimbatore.
- 2.The Judicial Magistrate, Fast Track at Magistrate Level II, Coimbatore.
- 3.The Public Prosecutor, High Court, Madras.

RMT.TEEKAA RAMAN,J.

ari

Pre-delivery order made in
Crl.R.C.No.1042 of 2012

26.09.2018