IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.41 of 2015

C.Jayapal ... Petitioner/Accused

vs

R.Bommi (deceased)
S.Prabha Devi ... Respondent/Complaint

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, to set aside the conviction and sentence passed on him by the Principal Sessions Judge, Tiruvallur in C.A.No.70 of 2013 dated 16.10.2014 to undergo S.I. for three months and to pay a compensation of Rs.13,00,000/- to the complainant under Section 357(3) of Cr.P.C. IDSI for one month under Section 138 of Negotiable Instruments Act confirming the Judgment and sentence imposed on the petitioner by the learned Fast Track Court Magisterial Level II, Poonamallee by Judgment dated 13.08.2013 in cc no . 16/2012.

For Petitioner : Mr.T.Munirathinam Naidu

For Respondent : Mr.P.Rathanavel

ORDER

This instant criminal Revision is directed against the order confirming the Judgment of Sentence imposed on the Revision Petitioner by the Learned District and Sessions Court, Tiruvallur in C.A.No.70 of 2013 dated 16.10.2014, confirming the Judgment of the Learned Fast Track Court Magistrate Level II, Poonamalli made in C.C.No.16 of 2012 dated 13.08.2013 whereby the Revision Petitioner was held guilty for an offence under Section 138 of Negotiable Instruments Act.

2.It is the case of the Revision Petitioner that previously he acted as a power of attorney of the original complainant namely R.Bommi, who is the mother of the Respondent herein namely S. Prabhadevi.

3.The Revision Petitioner was entrusted as the power of attorney by said R.Bommi such that authorizing to sell her house property situated in Ramapuram in Chennai. Revision Petitioner was appointed as General Power of Attorney by a registered dated 18.07.2018 on the file of Joint Sub-Registrar Office, Saidapet.

4.In pursuant to the above GPA, the revision Petitioner acted in good faith and sold the house property for sale consideration at Rs.13,50,000/- (Rupees Thirteen lakhs and fifty thousand only). Previously an undertaking was given by the Revision Petitioner in favour of the said Bommiammal to pay the sale consideration on its receipt from the vendee. Yet again two cheques were also issued by the Revision Petitioner as a security for the payment of the sale consideration.

5.This being the factum, the house property was sold for a sum of Rs.13,50,000/- (Rupees Thirteen lakhs and fifty thousand only) and the sale consideration was duly paid to the said Bommi. However, said Bommi with the fraudulent intention to extort money by projecting as if the sale consideration was not paid in full by the Revision Petitioner had presented the above said two cheques before the Bank for encashment. Since the said cheques were returned for want of fund by issuing the statutory notice the said Bommi filed a private complaint under Section 200 of Cr.P.C. for the alleged offence under Section 138 of Negotiable Instrument Act before the learned Fast Track Court Magistrate Level No.2, Poonamalli.

6.The said complaint was taken on file in C.C.No.16 of 2012 by the learned Magistrate. Pending trial said Bommi died and the present respondent herein namely S.Prabhadevi substituted on behalf of the deceased complainant. The learned Magistrate without appreciation of above facts held that the Revision Petitioner had failed to rebut the statutory presumption under Section 118 of Negotiable Instruments Act thereby held the Revision Petitioner guilty of offence under Negotiable Instruments Act and he was sentenced to three months simple imprisonment with the direction to pay compensation of Rs.13,00,000/- (Rupees Thirteen lakhs only) to the complainant. Aggrieved over the same the Revision Petitioner filed an appeal in C.A.No.70 of 2013 on the file of the learned District and Sessions Court, Thiruvallur. Misfortunately, the appeal came to be dismissed by an order dated 13.08.2013, which is under challenge in this criminal revision.

7.I heard Mr.T.Munirathinam Naidu, learned counsel for the petitioner and Mr.P.Rathanavel, learned counsel for the respondent and perused the entire materials available on record.

8.It is seen from the records that the case of the complainant before the Trial Court is that the petitioner herein was appointed as Power of Attorney Agent of R.Bommi to sell a house property in Ramavaram, Chennai. He was so authorized to sell the house property on behalf of R. Bommi and he was entrusted with duty to pay the sale consideration on receipt of the same from the purchaser.

9.While so on 17.10.2008 i.e., two months later to the execution of General power of attorney in favour of the Revision Petitioner, few unknown person started fencing the subject house property authorized for sale. On enquiry, the complainant found that the house property was sold by the Revision Petitioner to a third party. Immediately, the complainant rushed to the Revision Petitioner and on enquiry, it was informed by the Revision Petitioner that the house property was sold for a sum of Rs.13,50,000/- (Rupees Thirteen lakhs and fifty thousand only) and he was then yet to receive the sale consideration. He thereby promised to pay the amount on receipt.

10.Shortly it was informed by the revision petitioner that the said amount was received by him and was used out of an emergency. In so doing, with a promise to pay the said sale consideration the revision petitioner issued two post dated cheque for a sum of Rs.7,00,000/- (Rupees Seven lakhs only) vide cheque No.702767 dated 20.11.2008 and cheque No.702768 dated 05.12.2008 for a sum of Rs.6,50,000/- (Rupees Six lakhs and fifty thousand only) drawn from Indian Bank.

11.Thereafter on 20.11.2008 the revision petitioner paid a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) and consequently the cheque previously issued for a sum of Rs.7,00,000/- (Rupees Seven Lakhs only) was returned back to the revision petitioner. In the meantime, complainant found that her property was sold at a higher rate than that of the amount informed by the revision petitioner quoting Rs.13,50,000/- (Rupees Thirteen lakhs and fifty thousand only). Whereupon the complainant obtained certified copy of the sale deed dated 16.10.2008 and 03.04.2009 by which the petitioner house property and the land attached to it was sold by the revision petitioner acting as complainant's power agent.

12.It was shocking to see that the face value of the property was quoted and stood reflected as Rs.33,11,000/- (Rupees Thirty three lakhs and eleven thousand only). Thereupon the complainant demanded the balance sale consideration and for that a cheque dated 18.03.2009 in Cheque No.70795 was issued for a sum Rs.6,50,000/- (Rupees Six lakhs and fifty thousand only) with further instruction to encash Cheque No.702768 on 26.03.2009 towards his liability.

13.Accordingly the complainant presented both the cheques for encashment on 26.03.2009 before Indian Bank, Valsaravakkam on 26.03.2009 in line with revision petitioner's instruction. However both the cheques were returned for want of sufficient funds. Therefore statutory notice was issued calling upon the revision petitioner to pay the amount due to the complainant. As there was no payment made by the revision petitioner the above complaint came to be instituted by the complainant.

14.Besides it is seen that on complainant's side, the complainant had examined herself as PW1 and the bank manager of the Indian bank was examined as PW2.

15.The cheques bearing No.702768 dated 05.12.2008 and 702795 dated 18.03.2009 is marked as exhibit P6 and P7 respectively. The undertaking furnished by the revision petitioner is Ex.P5. The return memo is exhibit P8 and exhibit P9 is the legal notice dated 24.04.2009. Exhibits-P12 and P13 are sale deeds in favour of P.Mannaraja and S.Kumaresan respectively to whom the complainant's house property was sold by the revision petitioner acting as the complainant's power agent. At the same time it is very strange to note that on the side of accused there was no exhibits marked and no witnesses were examined.

16.In the said factual background, the trail court by holding that the revision petitioner had failed to rebut the presumption under section 138 of Negotiable Instruments Act, thereby held the revision petitioner guilty of an offence under Negotiable Instruments Act. On appeal the appellate court also concurred with the decision of the trial court.

17.In the said factual matrix all that has to be looked by this Court in this appeal is as to whether the revision petitioner had successfully rebutted the initial burden rest on him to establish that there is no legally enforceable debt or any other liability for which the cheques were issued.

18.Further this court finds that it is not the case of the revision petitioner that the cheque was not issued to the complainant and it is not a case of forgery or manipulation.

19.Admitted case of either side is that the two cheques were issued by the revision petitioner to the complainant. The only ground raised by the revision petitioner is that the cheques were given for security purpose and the same was however misused despite of receipt of entire sale consideration of Rs.13,50,000/-.

20.On perusal of the records and exhibits-P12 and P13 the sale deeds, it is found that the property was sold for a sum of Rs.33,11,000/-. Therefore this court is not in a position to accept the case of the revision petitioner projecting as if the property was sold at Rs.13,50,000/- and the entire sale consideration was paid.

21.It is equally important to note that there is neither any evidence nor any documents put forth by the revision petitioner supporting his case. Though it is claimed by the revision petitioner that the entire sale consideration was paid as per his promise, absolutely there is no material or a piece of paper to support his claim.

22.In such circumstance, statutory presumption raised under section 118 of Negotiable Instruments Act as against the revision petitioner as subject cheques were issued for the sum indicated in the cheque towards a legally enforceable debt and liability, which the revision petitioner had to repay to the original complainant towards the sale price received by him as power agent.

23.In the case on hand admittedly while drawing a presumption in favor of the respondent as contemplated under section 139 of Negotiable Instruments Act, that the cheques were issued to the complainant for the discharge of debt or other liability, the fact remains that such presumption is not rebutted by the revision petitioner.

24.In such event I do not find any irregularity or infirmity over the findings of the courts below holding the revision petitioner guilty of offence under section 138 of Negotiable Instruments Act. This court had also ensured that all the statutory requirements falling under section 138(a-c) of NI Act is duly complied with before institution of the subject complaint.

25.In the result, this criminal revision fails and the same is accordingly dismissed by confirming the Judgment made by the Learned Principal Sessions Court, Tiruvallur in C.A.No.70 of 2013 dated 16.10.2014, confirming the Judgment of the Learned Fast Track Court Magisterial Level-II, Poonamallee in C.C.No.16 of 2012 dated 13.08.2013. No costs.

Sd/-
Assistant Registrar(CS ix)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Principal Sessions Judge,
Tiruvallur.

2.The Fast Track Court Magisterial Level II,
Poonamallee.

+2cc to Mr.P.Rathanavel , Advocate SR.No. 69404

Crl.R.C.No.41 of 2015

ASK(26/10/2018)