

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :28.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.787 of 2013

Jaganathan

...Petitioner

Vs.

V.Sathish,
S/o.Venugopal, Prop.
M/S.Netsys Technology Solutions,
No.19H, 4th Cross, Auxilium College Road,
Gandhi Nagar, Vellore-632 006, and also
Residing at No.5/144, 5th East Cross Street,
"A" Sector, V.G.Rao Nagar, Gandhi Nagar,
Vellore-6, Vellore Districts.

...Respondent

Prayer:

This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for records in C.A.No.33 of 2012, dated 17.09.2013 on the file of the learned Principal District and Session Judge, Vellore and set aside the same.

For Petitioner : Mr.B.R.Shankaralingam
For Respondent : No appearance

O R D E R

The Criminal Revision has been filed to call for the records in C.A.No.33 of 2012, dated 17.09.2013, on the file of the learned District and Sessions Judge, Vellore and set aside the same.

2. The Revision petitioner is the complainant. The case of the petitioner is that on 10.03.2009, the respondent borrowed a sum of Rs.4,75,000/- from the petitioner and executed a promissory note in favour of the petitioner for a sum of Rs.4,75,000/- and agreed to repay the same with interest at the rate of 24% per annum. Subsequently, on 28.01.2010, the respondent issued a Cheque bearing No.407668 drawn on ICICI Bank, Vellore. The Revision petitioner presented the cheque for encashment on 29.01.2010 and the same was returned with an endorsement for want of 'insufficient funds'. Thereafter, on

04.02.2010, the revision petitioner issued a statutory notice, calling upon the respondent to repay the cheque amount. The said notice was received by the respondent/accused on 05.02.2010. After the receipt of the notice sent by the petitioner, he neither repaid the cheque amount, nor sent any reply. Therefore, he filed a private complaint before the learned Judicial Magistrate, Fast Track Court, Vellore and the same was taken on file in C.C.No.492 of 2011. After completing the legal formalities and enquiry, the trial Judge found the accused guilty for offence under Section 138 of Negotiable Instrument Act and convicted the respondent/accused and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month. Against the judgment of conviction and sentence passed by the learned Judicial Magistrate, the respondent filed an appeal before the learned Principal District and Sessions Judge, Vellore in C.A.No.33 of 2012. After hearing both sides, the learned District Judge allowed the appeal and acquitted the respondent on the ground that the Revision petitioner has not produced the promissory note issued by the respondent. Therefore, the appeal was allowed and order passed by the learned Judicial Magistrate was set aside. Against the judgment of acquittal passed by the learned District and Sessions Judge, Vellore, the revision petitioner/complainant has preferred the present appeal before this Court.

3. The learned counsel appearing for the petitioner would submit that issuance of cheque has not been denied by the accused and the signature found in the cheque has also not denied. The only reason for allowing the appeal is that the appellant has not proved the notice sent to the respondent. Notice was correctly addressed and when the notice was served, one Hema, who was a employer of the respondent's company, received. Then, she signed for the respondent, the said acknowledgment was marked as Ex.P.8. The learned counsel further submitted that the learned District Judge failed to consider these aspects and held that notice was not served. As regards the non production of the promissory note by the petitioner, the learned counsel submitted that the promissory note executed by the accused in favour of the petitioner was returned to him. The said letter was marked as Ex.P.9 and the acknowledgment was also marked as Ex.P.8. However, both the Ex.P.8 and Ex.P.9 were not considered by the appellate Court and therefore, the judgment of acquittal warrants interference.

4. Though notice was served on the respondent, he has not appeared either in person or engaged any counsel. Therefore, his name was directed to be printed in the cause list. Still, there is no appearance on behalf of the respondent. Therefore, after hearing the learned counsel for the petitioner, this Court

decides the revision on merits in accordance with law.

5. It is the case of the revision petitioner that the respondent borrowed a sum of Rs.4,75,000/-and executed a promissory note. Subsequently, on receipt of the promissory note, he executed a cheque for a sum of Rs.4,75,000/-. At request of the respondent, the petitioner presented the cheque in bank for encashment and the same was returned for want of insufficient funds. A statutory notice was sent through his counsel. Even after, receipt of notice, the respondent neither repaid the amount, nor sent reply for the notice. Therefore, the appellant filed a private complaint before the learned Judicial Magistrate, Vellore. After enquiry, the learned Magistrate found the respondent guilty and convicted and sentenced the respondent as stated supra. Challenging the same, the petitioner has preferred an appeal before the learned Principal District and Sessions Judge. The learned Appellate Judge dismissed the appeal on the ground that the promissory note alleged to have been executed by the respondent in favour of the petitioner on the ground that the petitioner has not proved issuance of statutory notice and receipt of the same by the respondent.

6. As regards the execution of private notice, the petitioner has produced Ex.P.9/letter. Ex.P.9 is a letter, said to have been executed by the respondent for having received the private notice from the petitioner. However, the respondent/accused has denied the same and contended that the said letter is forged document. Though such claim was made by the respondent, it is pertinent to note that the respondent has not sought for any permission for sending the letter to the forensic department for obtaining an expert opinion and ascertain the genuineness of the document. It is alleged that there was no private notice between the parties. The next ground for allowing the appeal filed by the respondent is that the petitioner has not proved the issuance of statutory notice. The petitioner has marked Ex.P.8/acknowledgment card. The said card is said to have been received by the employee of the respondent by name Hema. Though the respondent denied the acknowledgment, he has not established that there was no employee by name Hema, working in the office.

7. On going through the entire materials available on record, this Court is of the view that the petitioner has proved the case beyond reasonable doubt. The appellate Court has not considered the evidence and documents available on record, and the defence in proper prospective and has overturned the well considered order of the trial Court and the same warrants interference by this Court by exercising revisionary jurisdiction.

8. In the result, the Criminal Revision is allowed by

setting aside the judgment of the learned Appellate Court in C.A.No.33 of 2012, dated 17.09.2013 and by restoring the order passed by the learned trial Court in C.C.No.492 of 2011, dated 17.01.2012. The conviction and sentence imposed on the respondent by the trial Court is hereby confirmed. The trial Court is directed to secure the custody of the accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Session Judge,
Vellore.
2. The Judicial Magistrate,
Fast Track Court, Vellore.
3. The Section Officer,
Criminal Section,
High Court, Madras-104.

+lcc to Mr.B.R.Shankaralingam, Advocate, S.R.No.67307

CrI.A.No.787 of 2013

PP(CO)
CS/26/06/2019

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