

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 05.09.2018

Pronounced on 03.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.32 & 1430 of 2013

Crl.R.C.No.32 of 2013

A.Sethurama Subbaiah .. Petitioner/Complainant

Vs

Thomas .. Respondent/Accused

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Criminal Procedure Code, to enhance the sentence to the accused made in STC.No.18 of 2012 dated 27.11.2012 on the file of the Judicial Magistrate, FTC at Magisterial Level-II, at Coimbatore.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondent : Mr.R.Shankaralingam

Crl.R.C.No.1430 of 2013

Thomas .. Petitioner/Accused

Vs

A.Sethurama Subbaiah .. Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to call for the records in C.A.No.347 of 2012, dated 19.08.2013 on the file of the III Additional District and Session Judge, Coimbatore and confirming the order passed in S.T.C.No.18/2012, dated 27.11.2012 on the file of learned Judicial Magistrate, Fast Track Court at Magisterial Level II, Coimbatore and set aside the same.

For Petitioner : Mr.R.Shankaralingam

For Respondent : Mr.I.Abrar MD Abdullah

C O M M O N O R D E R

The case of the complainant is that the petitioner/accused borrowed a sum of Rs.1 lakh on

01.02.2008 and issued a cheque bearing S.No.716364, when the said cheque was presented for collection, the same was dishonoured for the reason "Insufficient Funds". Thereafter, statutory notice was sent by the complainant to the accused on 25.08.2008 and said postal cover was returned with an endorsement intimation delivered on 06.10.2008. Since the accused has not paid the amount mentioned in the statutory notice nor sent reply to the said notice. Therefore, he filed a complaint before the Magistrate for the offence under Section 138 of Negotiable Instruments Act, r/w Section 200 and 357 of Cr.P.C.

2.In order to prove the case of the complainant before the Magistrate, he himself was examined as P.W.1 and five documents were marked on his behalf. The incriminating circumstances which put before the accused, he denied the evidence of complaint as false and he opted for examining witness on his behalf. On the side of defence two witnesses were examined and 6 documents were marked.

3.The learned Magistrate after completion of the trial, heard the case on either side and discussed elaborately and found the accused guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced to undergo three months simple imprisonment and directed to pay a sum of Rs.3,000/- as fine.

4.As against the said order dated 27.11.2012 made in STC No.18/2012, the complainant preferred Crl.R.C.No.32/2013 for enhancement of sentence.

5.On the other hand, feeling aggrieved against the judgment passed by the learned Magistrate, the petitioner/accused has preferred an appeal before the learned District and Sessions Judge, Coimbatore in Crl.A.No.347/2012 in turn the learned Sessions Judge, made over the appeal before the III Additional District and Sessions Judge, Coimbatore. The learned Appellate Court, after hearing the arguments on either side, found that there is no merit in the appeal, the complainant has proved his case beyond reasonable doubt and shifted the initial burden that the cheque was issued for legally enforceable debt, of course the presumption is rebuttable presumption. Whereas, the accused has not rebutted the statutory presumption. Therefore, the appellate Court dismissed the appeal by confirming the judgment of conviction and sentence passed by the trial Court.

6.Felling aggrieved against the judgment of the learned III Additional District and Sessions Judge made in Crl.A.No.347/2012 dated 19.08.2013, the accused preferred the present revision in Crl.R.C.No.1430/2013 before this Court.

7.The learned counsel for the petitioner/accused would submit that the learned Additional District Judge has not passed any speaking order and Courts below failed to consider that the complainant has not proved the alleged loan transaction and borrowal of Rs.1 lakh by the respondent. The complainant has not produced any documentary proof, the alleged transaction of Rs.1 lakh was advanced to the accused on a particular date. The complaint has not proved the case in the manner known to law, the complainant has not produced any evidence showing that the cheque was issued only for legally enforceable liability. In the absence of any such documentary proof, showing loan transaction between the complainant and respondent, the judgment of the Courts below are perverse and both the Courts below failed to note that the accused has rebutted the presumption under Section 139 of Negotiable Instruments Act.

8.Under these circumstances, the judgment of the Courts below are liable to be set aside and the learned counsel for the petitioner/accused has placed reliance on the judgments rendered by this Court reported in

i)(2011) 2 MLJ (Crl) 590 (P.Gnanambigai Vs. S.Krishnasamy and Another),

- ii)2006 (5) CTC 296 (P.Eswaran Vs. J.A.Abdul Hameed) and
- iii)(2007) 2 MLJ (Crl) 1684 (M.A.Nachimuthu Vs. N.Ravichandran).

9.The learned counsel for the complainant would submit that the execution of the cheque has not been denied and signature found in the cheque is also not in dispute. Therefore, once he admitted that the accused issued a cheque in favour of the complainant and admitted the execution of cheque, it is the statutory presumption under Section 118 and 139 of Negotiable Instruments Act, that the cheque is issued for legally enforceable liability. Therefore, the initial burden has been proved by the complainant and the admission was made by the accused himself. Therefore, it is for the accused to rebut the presumption that the cheque was not issued for the legally discharged liability. Therefore, under these circumstances, the complainant proved his case before the Courts below. The Courts below also came to conclusion that the complainant proved his initial burden that the cheque was issued for legally enforceable liability. Whereas, the accused has not rebutted the statutory presumption and convicted the accused and passed the sentence.

10.However, the learned counsel for the revision petitioner/complainant in Crl.R.C.No.32/2013 filed the revision as against the conviction and sentence passed by the trial Court for imposing fine of Rs.3,000/-, which warrants interference by this Court. Therefore, the sentence of 3 months simple imprisonment is liable to be set aside and pass enhancement of the sentence and fine amount and the same may be enhanced equal to that of the cheque amount.

11.Heard the rival submissions made on either side and perused the records.

12.It is the case of the complainant that the petitioner borrowed a sum of Rs.1 lakh from the complainant on 01.02.2008 and issued a cheque bearing No.716364, the complainant presented the cheque in his bank that the said cheque was returned and after receipt of the return memo, the complainant issued a statutory notice through his counsel dated 24.09.2008, the said notice was received by the accused on 06.10.2008. After receiving notice, the accused either repaid the amount demanded or he sent any reply to the statutory notice. Therefore, the complainant filed a complaint before the Magistrate under Section 138 of Negotiable Instruments Act. After completing the legal formalities and after trial, the Magistrate convicted the accused under Section 138 of Negotiable Instruments Act and sentenced to undergo three months simple imprisonment and to pay a fine of Rs.3,000/-. Feeling aggrieved by the order passed by the Magistrate, the accused preferred the appeal before the District Court, the Sessions Judge also dismissed the appeal by confirming the conviction and sentence imposed by the trial Court.

13.The learned counsel for the petitioner in Crl.R.C.No.32/2013 would submit that the respondent-accused has admitted the execution of the cheque and also the signature found in the cheque. Therefore, the initial burden shifted on the respondent-accused that the cheque was issued only for legally enforceable debt. Once execution of cheque is admitted and not disputed the signature the presumption of that cheque was issued to legally enforceable liability. The said presumption is rebuttable presumption but the respondent-accused has not rebutted the presumption in the manner known to law. Therefore, there is no perversity in the judgment of both the Courts below.

14.On a careful perusal of the records reveals that the complainant has proved that the accused borrowed a sum of Rs.1 lakh and issued a cheque on 01.02.2008, when he presented, the cheque was returned. Therefore, within 15 days from the statutory period, the accused failed to pay the amount. Therefore, he committed the offence and Courts below found that the complainant has proved, the execution of cheque and drew the legal presumption.

15. Whereas, the accused has stated that the complainant has not proved, the loan transaction between both the parties and he has attempted to prove that he has not borrowed money and also the cheque has not been issued for the legally enforceable debt. It is well settled law that once the execution of the cheque is admitted and the signature is not disputed and it is the legal presumption that the cheque is issued for the legally enforceable debt. No doubt, the presumption is rebuttable presumption. Therefore, it is for the accused to rebut the presumption. If not through direct evidence but by way of probable defence.

16. So in this case, both the Courts below have stated that the complainant has proved the case and also drawn the statutory presumption and further found that the accused has not rebutted the statutory presumption. Therefore, they found guilty and passed the sentence. It is also a settled law, this Court cannot sit in the arm chair of the appellate Court and revisit the entire evidence and re-appreciate the entire evidence. As a revision Court, this Court has to see only the existence of any perversity in the order passed by both the Courts below. The both the Courts below appreciated the entire oral and documentary evidences and found that the complainant has proved his case and satisfied the legal presumption drawn in his favour. Further, the Courts below found that the said legal presumption has not been rebutted by the accused in the manner known to law.

17. Under these circumstances, considering the facts available on the records and also the statutory proposition, this Court does not find any perversity in the order passed by both the Courts below. Therefore, the criminal revision in CrI.R.C.No.1430/2013 filed by the accused is dismissed. At the same time partly allowed the criminal revision in CrI.R.C.No.32/2013 for enhancement of the fine amount. Once the Courts below found that the cheque issued by the accused is legally enforceable debt, the fine imposed by the Courts below should have been equal to twice the cheque amount. Therefore, the order passed by the Courts below with regard to conviction and sentence is hereby confirmed and modified the fine amount to Rs.2 lakhs instead of Rs.3,000/-.

18. The accused is directed to deposit the fine amount of Rs.2 lakhs before the trial Court within a period of six months, on such deposit, the same shall be drawn and paid to the complainant by way of compensation. However, the fine amount of Rs.3,000/- is modified and enhanced to Rs.2 lakhs which is equal to that of twice the cheque amount.

19. In the result, the CrI.R.C.No.32 of 2013, filed by the complainant to enhance the sentence is partly allowed. The CrI.R.C.No.1430 of 2013 filed by the accused to set aside the judgments passed by the Courts below is dismissed.

03.10.2018

Index: Yes/No

AT

P.VELMURUGAN,J.

AT

To

1.The Judicial Magistrate, FTC at Magisterial Level-II,
Coimbatore.

Crl.R.C.Nos.32 & 1430 of 2013

03.10.2018