

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.1348 of 2011

Umashankar

.. Petitioner/Accused

versus

1. The State rep. by
Public Prosecutor,
Coimbatore.

2. Shanmugaraj .. Respondent/Complainant

Prayer:

Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, to set aside the judgment and sentence passed against the petitioner / accused in C.A.No.25 of 2011 dated 30.06.2011 on the file of the learned I Additional District and Sessions Judge, Coimbatore, confirming the judgment and sentence passed by the learned Judicial Magistrate No.VI, Coimbatore made in C.C.No.45 of 2010 dated 23.12.2009 and acquit the petitioner.

For Petitioner : Mr.A.R.Suresh

For Respondent No.1 : Ms.T.P.Savitha

Government Advocate [Crl.Side]

For Respondent No.2 : Mr.P.Dinesh Kumar

for Mr.J.Ramakrishnan

O R D E R

This Revision has been preferred against the judgment rendered by the learned First Additional District and Sessions Judge, Coimbatore in C.A.No.25 of 2011. The said Criminal Appeal has been filed by the present revision petitioner praying to set aside the conviction and sentence awarded by the learned Judicial Magistrate No.VI, Coimbatore in C.C.No.45 of 2009.

2. The petitioner, namely, Umashankar, availed a loan of Rs.3,00,000/- from the second respondent, for which, he executed a promissory note, promising to repay the said loan with interest at the rate of 24% per annum. The said pro-note

was executed on 29.01.2007. Later, on 21.05.2008, the second respondent advanced another sum of Rs.2,00,000/-, which amount the petitioner had repaid on 27.05.2008. Subsequent to that, on 21.05.2008, the petitioner gave him a letter of assurance and a post dated cheque bearing No.162710 dated 24.09.2008 drawn on Canara Bank for Rs.4,19,000/- towards discharge of the first loan of Rs.3,00,000/- with interest due there on.

3. The said Memorandum of Understanding and the cheque had marked as Ex.P.2 and Ex.P.3. The second respondent presented the said cheque on 27.09.2008 for collection but the same was dishonoured on the ground of "insufficient funds". So, Ex.P.6 [statutory notice] was issued by the second respondent, in which, he called the petitioner to pay the entire amount within 15 days from the date of receipt of the notice. But as the amount was not paid, the second respondent laid a private complaint.

4. Before the Trial Court, the second respondent examined 3 witnesses as P.W.1 to P.W.3 and 8 documents were marked as Ex.P.1 to P.8. The petitioner had examined himself as R.W.1 and he exhibited two documents as Ex.D.1 and Ex.D.2. After full trial, the learned Magistrate held the petitioner found guilty for the offence under Section 138 of the Negotiable Instruments Act and thereafter, awarded the sentence to the petitioner. Against which, the petitioner filed the Criminal Appeal [Crl.A.No.25 of 2011] before the learned First Additional District and Sessions Judge, Coimbatore.

5. After elaborate enquiry, on 30.06.2011, the learned First Additional District and Sessions Judge, Coimbatore, dismissed the Appeal and confirmed the sentence awarded by the learned Magistrate. Now, in order to check the correctness of the above concurrent judgments, the petitioner filed the present revision before this Court.

6. According to the evidence given by the second respondent that the pro-note [Ex.P.1] was executed for the loan of Rs.3,00,000/-. Subsequent to that, the cheque now in question was issued only for discharging the said loan. So, according to him, the second loan, which was mentioned in Ex.P.2 [letter of assurance] was given to the petitioner without getting any security.

7. In this aspect, the learned counsel appearing for the petitioner would submit that as per the case of the second respondent, the earlier loan availed on 21.05.2008 had not been discharged till 21.05.2008. Even there is no evidence let in for showing the payment of interest, in the said circumstances,

giving another loan of Rs.2,00,000/- is probably not possible. So, the evidence given by the second respondent with regard to this case is nothing but a lie. Further, he vehemently submitted that Ex.P.2 [letter of assurance] and Ex.P.3 [cheque] are filled by way of typing letters. On the other hand, the pro-note executed by the petitioner was filled in hand-writing. This has also creates a doubt whether the alleged transaction made between the petitioner and the second respondent is a genuine one. Further added that no prudent man can give a loan of Rs.2,00,000/- without closing the earlier loan. Accordingly, prayed for allowing the Revision.

8. Before the Trial Court, the petitioner submitted that he borrowed a sum of Rs.50,000/- from the second respondent and in order to discharge the said loan along with interest, he paid Rs.2,00,000/- by drawing the amount from his Bank Account. After discharging the entire loan, the respondent had not return the cheques and pro-notes, which was given to the respondent at the time of availing loan. Now assuming the said defence is a true one, it should be supported by necessary documents. It is an admitted fact that the signature found in Ex.P.1 [Promissory Note] belongs to the petitioner.

9. In the said circumstances, it is not necessary to mention the two transactions in a single vardhamana letter. Moreover, the said aspect creates a doubt on the case of the second respondent. However, since the signature found in the cheque is admitted by the petitioner the burden to disprove the case is shifted to the petitioner. For which, the petitioner has not shown any probable defence. In this situation, the provisions under Sections 114 and 139 of the Negotiable Instruments Act has coming to play. Now, on going through the judgment of our Honourable Apex Court reported in 2010 [4] CTC 118 in the case of RANGAPPA vs. SRI MOHAN in which our Honourable Apex Court has held as follows:

"15...As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the Complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the

statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

10. So, applying the said principle in this case also, there may be a slight discrepancy is seen in the vardhamana letter. Since the signature found in the pro-note and the cheque was admitted by the petitioner, we are not in a position to hold that the stand taken by the petitioner is a ground for allowing this Revision.

11. Moreover, the other stand taken by the petitioner is that the statutory notice has not served to him. Admittedly, the statutory notice was received by the wife of the accused. That fact is not disputed by the petitioner. In this regard, he gave evidence that due to some misunderstanding, his wife has left from his family and residing in her parents house. But in order to show the said fact, the petitioner has not produced any documents before the Trial Court to show that the wife of the petitioner not residing in the address, in which, the petitioner was resided. In the said situation, this Court cannot find any manifest error in a finding arrived by the both Courts.

12. In fine, the Criminal Revision Petition filed by the petitioner is dismissed. The conviction and sentence passed by the Courts below are confirmed. The Trial Court is directed to take steps to secure the custody of the revision petitioner/accused for undergoing the remaining period of sentence.

Sd/-
Assistant Registrar(CO)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

sri

To

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.VI,
Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore.

4. The Public Prosecutor,
Coimbatore.
5. The Public Prosecutor,
High Court, Madras.

Copy to

1. The Record Keeper,
Criminal Section,
High Court, Madras.
2. The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.30814

+1cc to Mr.J.Ramakrishnan, Advocate, S.R.No.31602

Crl.R.C.No.1348 of 2011

rsi(co)
cs/17/05/18



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