

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.03.2018

Pronounced on : 05.06.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Cr1.R.C.No.1444 of 2016

Sri. Parameswaran Pillai, ... Petitioner

Vs.

Sri. V.S.Ravi ... Respondent

Prayer: Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., to call for the records in C.A.No.141 of 2014, dated 18.11.2016, on the file of the VI Additional Sessions Judge, Chennai, and confirming the Order/Judgment passed in C.C.No.6228 of 2011, dated 04.04.2014 on the file of the Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai, and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.Sri B.R.Shankaralingam

For Respondent : Mr.M.J.P.Rajkumar

ORDER

The instant Criminal Revision Case is preferred as against the judgment passed in Criminal Appeal No.141 of 2014 dated 18.11.2016 on the file of the learned I Additional Sessions Judge, (City Civil Court), Chennai in confirming the judgment of conviction passed in C.C. No.6228 of 2011 dated 04.04.2016 on the file of the learned Metropolitan Magistrate (Fast Track Court No.3), Saidapet, Chennai. Further, the Revision Petitioner is an accused in a case initiated by the Respondent herein under section 138 of the Negotiable Instruments Act (herein after referred as N.I. Act). As the revision petitioner herein pleaded not guilty during the trial, he was ordered to face the trial.

2.The case of complaint is that on 15.12.2011, the revision Petitioner borrowed a sum of Rs.2,00,000/- and for the said amount he entrusted a cheque bearing No.283623 dated 15.12.2011, Indian Bank, East Abiramapuram Branch, Chennai in favour of the respondent/complainant. Since the accused not

paid the said amount as promised by him, the cheque was presented for collection on 21.03.2011, but the same was returned as "Payment Stopped by the Drawer" vide memo dated 22.03.2011. Thereafter the complainant caused a legal notice on 19.04.2011 and the same was returned with an endorsement as "Door locked, intimation delivered". There is no reply by the accused/appellant herein, the respondent herein filed the complaint under section 142 of the Negotiable Instruments Act for the offence punishable under Section 138 of the same Act before the learned Metropolitan Magistrate (Fast Track Court No.3), Saidapet, Chennai in C.C.No.6228 of 2011.

3.In the conclusion of the trial, the Revision Petitioner/accused was found guilty for the offence under section 138 of Negotiable Instruments Act and was ordered to undergo one year simple imprisonment and was also directed to pay the cheque amount by way of compensation, in default to pay the amount, he should undergo simple imprisonment for one month as per the judgment dated 04.04.2014. Against the said order of conviction, the Revision Petitioner/Accused filed an appeal before the learned I Additional Sessions Judge, (City Civil Court), Chennai in Crl.A.No.141 of 2016, but the same was dismissed on 18.11.2016 by confirming the Judgment of the learned trial court.

4.Aggrieved by the judgment of the learned appellate court and challenging the legality and propriety of the conviction and sentence imposed against him, the present revision is preferred by the Revision Petitioner before this court.

5.The learned counsel appearing for the Revision Petitioner has contended that the averments made in the complaint that the cheque had been presented on 21.03.2011 and the same had been returned, were not proved by the Respondent/Complaint by producing documentary evidence. Further, the learned counsel for the Revision Petitioner has also contended that the learned trial court and the learned appellate court have convicted the petitioner only on the presumption under sections 118 and 139 of Negotiable Instruments Act as if the cheque has been issued for legally enforceable debt. But the courts below have failed to consider the legal proposition that mere failure to send reply notice will not take away the right of the party to contest the case. Hence, the case wherein it may be true that the issuance of cheque by the accused was admitted alone would not come under the statutory presumption available to the respondent herein under sections 118 and 139 of the Negotiable Instruments Act.

6.Further, the courts below have erroneously held that Ex.P-1 cheque was issued to discharge the legally enforceable debt. The learned Counsel for the revision petitioner, has further contended that though the signature in Ex-P1 was admitted and the unfilled cheque was issued by the revision Petitioner/Accused only as security for a meager amount borrowed before 8 years back and the same was also discharged, however, the respondent herein presented the cheque with a malafide intension.

7.Per contra, the learned counsel for the Respondent/ Complainant has contended that the trial court as well as appellate court has rightly come to the conclusion that the Petitioner issued the cheque for the legally enforceable debt and the same was also proved by the complainant by giving proper evidence. Further, though the Petitioner also admitted that he borrowed a sum of Rs.2,00,000/- and the same was repaid, he has not given any evidence to prove his repayment. So, the conviction of the trial court as well as appellate court is sustainable. Further, it is pointed out by the learned counsel that the respondent/complainant has proved that the cheque was issued in discharge of the liability of the revision petitioner and so judgment of the courts below needs no interference.

8.I heard Mr.Sri B.R.Shankaralingam, learned counsel for the petitioner and Mr.M.J.P.Rajkumar, learned counsel for the respondent and the relevant materials available on record are carefully perused.

9.Considering the rival submission made on either side, this court has to see whether the subject cheque was issued to discharge the legally enforceable debt or not? In this regard this court has to decide whether the complainant has proved his case first that the cheque was issued in lieu of a legally enforceable debt or not? In this regard, both the courts below have considered as the revision petitioner/accused had not sent any reply notice to the statutory demand notice issued by the respondent/complainant, it has to be presumed that the cheque was issued in lieu of the legally enforceable debt. However, the law laid down by this Court as well as the Hon'ble Supreme Court that the mere failure of the accused in responding the statutory demand notice, no liability can be fixed upon the accused.

10.In one of the Judgment of our High Court in the case of P.Gnanambigai v. S.Krishnasamy and Another reported in 2011 (2)

MLJ (Cr1) 590 the above said legal proposition has been decided in favour of the accused. Unfortunately, both the courts below have failed to consider this important aspect and hold that the revision petitioner/accused is guilty of the offence. The findings of the courts below are unsustainable, because, it is for the complainant to prove that the cheque was issued in lieu of the legally enforceable debt. Once, the respondent/complainant has successfully proved the issuance of the cheque is meant for legally enforceable debts, then only the burden shift upon the revision petitioner/accused to rebut the presumption against him as contemplated under sections 118 and 139 of the Negotiable Instruments Act. Here, in the considered opinion of this court that the respondent/Complainant has not proved the vital and prime aspect that the cheque was issued in discharge of a legally enforceable debt. Hence, this court has no hesitation to hold that the courts below have erred in convicting the revision petitioner/accused for the offence under section 138 of the Negotiable Instruments Act.

11. In the result, this criminal revision case is allowed and the accused is acquitted and the conviction made against the accused in C.C.No.6228 of 2011 dated 04.04.2016 on the file of the learned Metropolitan Magistrate (Fast Track Court No.3), Saidapet, Chennai which was confirmed in Criminal Appeal No.141 of 2014 dated 18.11.2016 on the file of the learned I Additional Sessions Judge, (City Civil Court), Chennai are hereby set aside. There is no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The VI Additional Sessions Judge,
Chennai.

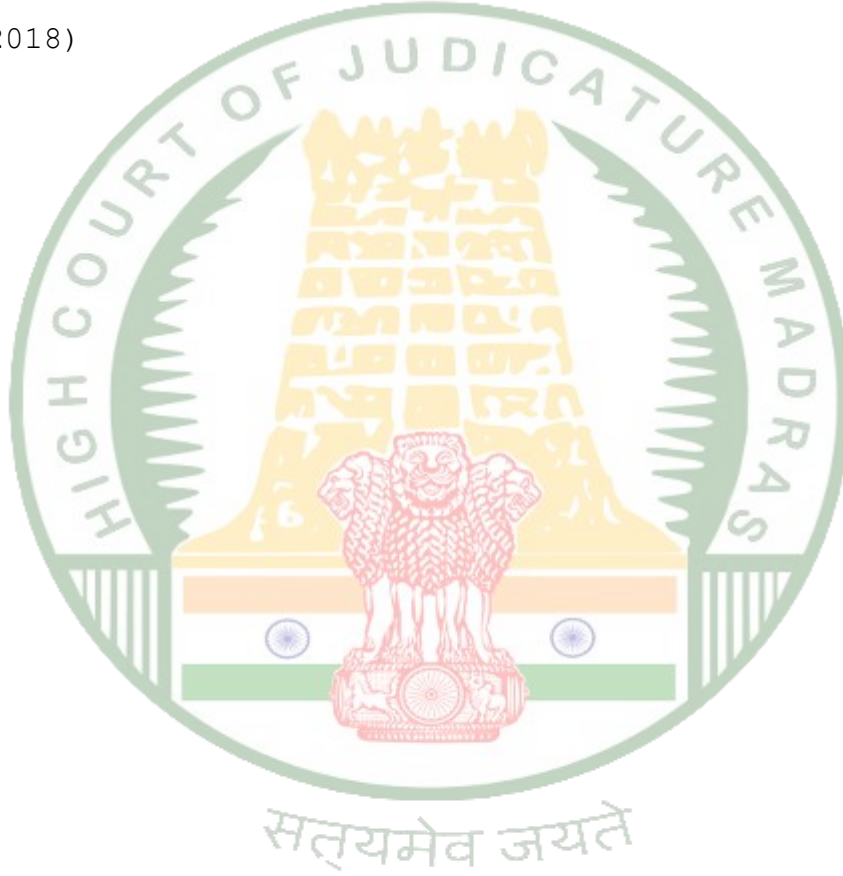
2. The Metropolitan Magistrate,
Fast Track Court-III,
Saidapet, Chennai.

Copy to
The Section officer
Criminal Section, High Court, Madras.

+1 CC to Me.B.R. Shankaralingam, Advocate sr 34855.
+1 CC to Mr.M.J.P. Rajkumar, Advocate sr 34845.

Crl.R.C.No.1444 of 2016

SP(21/06/2018)



WEB COPY