

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.137 of 2013

E.Balasubramaniam

...Petitioner

Vs.

P.Venkatachalam

...Respondent

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the conviction imposed in judgment dated 23.11.2012 made in C.A.No.137 of 2012 on the file of the I Additional Sessions Court, Erode, confirming the conviction imposed in the judgment dated 12.07.2012 mad in S.T.C.No.4529 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.P.Pandiyaraj for
Ms.P.T.Ramadevi

ORDER

This criminal revision has been filed against conviction imposed in judgment dated 23.11.2012 made in C.A.No.137 of 2012 on the file of the I Additional Sessions Court, Erode, confirming the conviction imposed in the judgment dated 12.07.2012 mad in S.T.C.No.4529 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

2 The case of the respondent/complainant is that the appellant/accused borrowed a sum of Rs.2,00,000/- and issued a cheque on 15.04.2009 to discharge the said liability. The respondent/complainant presented the said cheque on 15.06.2009 for collection, which was returned on 17.06.2009 as "insufficient funds". Subsequently, the respondent/complainant issued legal notice dated 22.06.2009 demanding money. Even though the appellant/accused acknowledged the notice, did not send any reply for the same. Hence the respondent/complainant has filed a private complaint before the learned District

Munsif-cum-Judicial Magistrate, Perungudi, and the same was taken on file in S.T.C.No.4529 of 2009.

3 The learned Magistrate, after trial, since the appellant/accused found guilty under Section 138 of Negotiable Instruments Act, had convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of six months and fine of Rs.10,000/-, in default, further simple imprisonment for a period of three months. Aggrieved against which, the accused had filed an appeal in C.A.No.137 of 2012 before the learned I Additional Sessions Judge, Erode. The lower appellate Court, being a fact finding Court re-appreciated entire evidence, and after giving due opportunities to both the parties, dismissed the appeal by judgment dated 23.11.2012 and confirmed the conviction and sentence passed by the trial Court.

4 Aggrieved against the said judgment dated 23.11.2012 made in C.A.No.137 of 2012, the accused has preferred this present criminal revision before this Court.

5 The learned counsel for the petitioner/accused would submit that when the appellant/accused entered into witness box and stoutly denied the issuance of cheque and the signature found on the cheque then onus of proof is on the respondent/complainant to prove that the cheque was issued towards legally enforceable debt. But, the lower appellate Court wrongly casted the burden of proof on the appellant/accused, which is contrary to law. The respondent/complainant did not explain the fact as to how the cheque has been gone into the hands of the respondent/complainant and in the presence of whom he received the cheque. Further the respondent/complainant is failed to produce any documents to prove the execution of cheque. Mere production of cheque is not sufficient to discharge the burden and the respondent/complainant could not take shelter under Section 139 of Negotiable Instruments Act. The learned counsel in support of his contentions has relied on the decision of the Hon'ble Supreme Court reported in (2009) 2 SCC 513. Hence both the Courts below have failed to consider the above facts and erroneously convicted the appellant, which warrants interference of this Court.

6 The learned counsel for the respondent/complainant would submit that when the cheque is in possession of the complainant, the legal presumption is that the cheque is issued for legally enforceable debt under Section 118 & 139 of Negotiable Instruments Act and the burden of proof shifted on the accused. In support of his contentions, the learned counsel has relied on decisions rendered by the Hon'ble Supreme Court in Criminal Appeal No.1293 of 2006 in the case of Kalyani Baskar

vs. M.S.Sampoornam and judgment rendered by the High Court of Kerala reported in ILR 2009 (3) Kerala 43. The Courts below, after considering all these aspects, had convicted the accused.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 On a careful reading of the complaint, it reveals that the respondent/complainant stated that there is money transaction between the appellant/accused and respondent/complainant, whereas in the deposition he has clearly stated that he knows the accused from childhood and the accused used to come his father's Cycle Shop and there is no money transactions between him and the appellant/accused. Both the Courts below have failed to consider the above contrary statement made by the respondent/complainant. Further the respondent/complainant did not produce any substantial document to prove his claim, except production of disputed cheque/Ex.P1.

9 It is settled proposition of law, in criminal case, the burden of proof on the side of the prosecution only, if it is private complaint then the complainant has to prove his case. In the present case on hand the accused entered into witness box and stoutly denied the execution of cheque and the signature found on the cheque, it is for the complainant to substantiate his claim beyond reasonable doubts in the manner known to law.

10 In view of the above, this Court is inclined to set aside the conviction and sentence imposed by the trial Court and confirmed by the lower appellate Court by judgment dated 23.11.2012.

11 Accordingly, the revision is allowed and the judgment dated 23.11.2012 made in C.A.No.137 of 2012 is hereby set aside. The bail bond, if any, shall stand cancelled and the trial Court is directed to refund the amount to the appellant/accused, if any, deposited by him.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Sessions Court,
Erode.

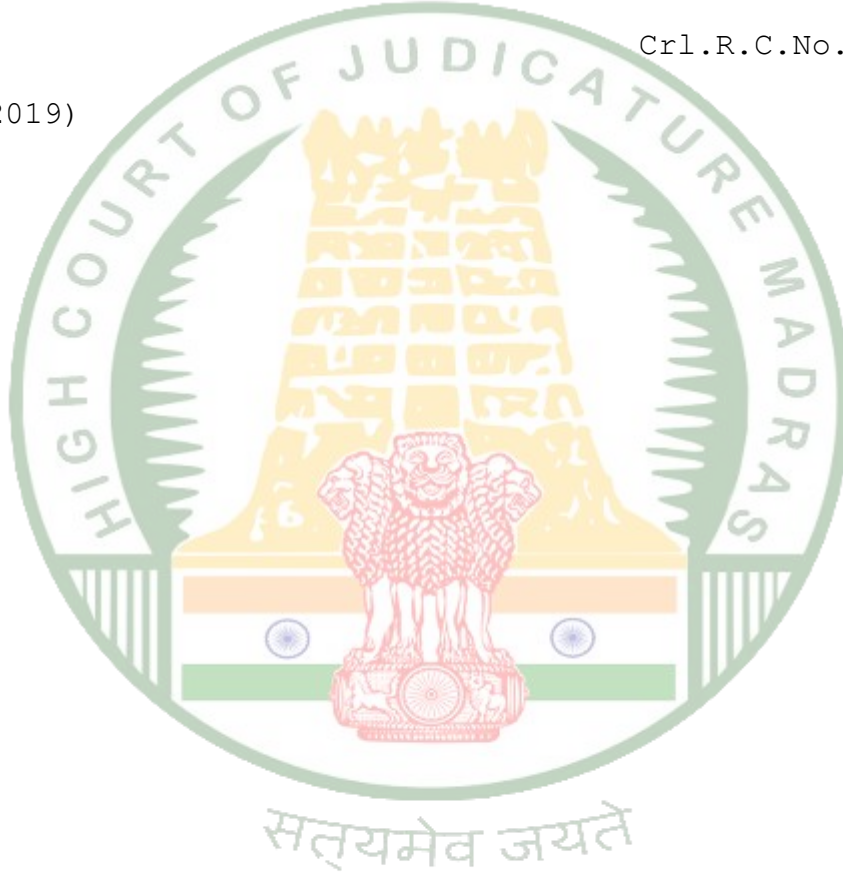
2. The District Munsif-cum-Judicial Magistrate,
Perundurai.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 61836

+2cc to Mr.P.T.Ramadevi, Advocate, S.R.No. 58768, 61496

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GN(13/03/2019)



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