IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.359 of 2014 and
M.P.No.4 of 2014

Naina Mohamed ...Petitioner/Accused

Vs.

Athayee ...Respondent/Complainant

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure, challenging the judgment dated 21.01.2014 in C.A.No.37 of 2014 on the file of the Principal Sessions Court, Namakkal, confirming the judgment of conviction of sentence dated 20.08.2013 in C.C.No.144 of 2011 on the file of the Judicial Magistrate No.1, Namakkal.

For Petitioner : No Appearance
Mr.Naina Mohamed
(Party - in - person)

For Respondent : Notice not served

O R D E R

This Criminal Revision has been filed against the judgment dated 21.01.2014 in C.A.No.37 of 2014 on the file of the Principal Sessions Court, Namakkal, confirming the judgment of conviction of sentence dated 20.08.2013 in C.C.No.144 of 2011 passed by the Judicial Magistrate No.1, Namakkal.

2.The respondent is the complainant and the petitioner is the accused.

3.The case of the respondent / complainant is that the petitioner/accused had borrowed a sum of Rs.4,00,000/- from the respondent/complainant on 20.12.2009 for his family expenses promising to repay the said amount within a month. To discharge the said loan amount, the petitioner/accused issued a cheque bearing No.818387, dated 27.12.2009 drawn on ING Vysya Bank Ltd., Namakkal Branch, for Rs.4,00,000/-. When the respondent/complainant, presented the said cheque for collection through Karur Vysya Bank, Salem Road, Namakkal Branch on 22.06.2010, the same was bounced on 22.06.2010 and returned to the complainant with an endorsement "Account closed". Then, on 01.07.2010, the respondent/complainant issued a notice to the accused directing him to pay the cheque amount of Rs.4,00,000/- within 15 days after receipt of the notice. The petitioner/accused received the notice on 03.07.2010 and 05.07.2010 respectively and the respondent/complainant has also received the acknowledgment on 06.07.2010. Even after the receipt of notice, the petitioner/accused, neither repaid the amount, nor sent any reply to the notice. Therefore, the respondent/complainant, filed a petition under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate I, Namakkal.

4.The complaint was taken cognizance in C.C.No.144 of 2011 by the learned Judicial Magistrate No.I, Namakkal. At the time of trial, the complainant examined himself as P.W.1 and six documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondent, one Rajendiran, the bank official was examined as D.W.1 and five documents were marked as Exs.D.1 to D.5.

5.The learned Judicial Magistrate I, Namakkal, after considering the arguments advanced by the learned counsel on either side and after perusing the records, found the petitioner/accused guilty and sentenced him to undergo simple imprisonment for six months and to pay a sum of Rs.4,00,000/- as compensation by the order dated 20.08.2013. Against which, the petitioner/accused filed an appeal in Crl.A.No.37 of 2013, before the learned Principal Sessions Judge, Namakkal. After hearing both sides, the learned Principal Sessions Judge by judgment dated 21.01.2014, confirmed the conviction and sentence passed in C.C.No.144 of 2011 by the learned Judicial Magistrate.

6.Aggrieved against the said judgment, the petitioner/accused has preferred the present criminal revision.

7.When the matter is taken up for hearing, it is seen that a memo dated 14.03.2017 was filed by the learned counsel for the petitioner stating that the petitioner received the bundle from him on 03.04.2014 for engaging a different counsel and hence, he has withdrawn his appearance. Hence, he requested the registry to print the name of the new counsel, who might have entered appearance for the petitioner or print the name of the petitioner. Hence, the Registry was directed to verify as to whether any fresh vakalat has been filed on behalf of the petitioner, if not print the name of the petitioner. As no vakalat has been filed, the name of the petitioner has been printed in the cause list.

8.Today, though the name of the petitioner has been printed in the cause list, there is no representation on behalf of the petitioner either in person or through counsel. Hence, this Court is inclined to dispose of the Criminal revision on merits on considering the materials available on record carefully.

9.On a perusal of records, it is seen that the petitioner borrowed a sum of Rs.4,00,000/- promising to repay the same within one month. When the respondent demanded to repay the loan, the petitioner issued Ex.P.1, the cheque bearing No.818387, dated 27.12.2009 for Rs.4,00,000/-. When the said cheque was presented for collection on 22.06.2010, the same was returned as dishonoured with an endorsement "Account closed". Hence, the respondent issued a notice to the petitioner on 01.07.2010, for which, he received the acknowledgment card dated 06.07.2010.

10.In the cross examination of P.W.1, P.W.1 has stated that she is doing the agriculture and she has not paid the income tax. She along with her husband has given loan to several persons. The petitioner in respect of his loan, he issued only the cheque, but he never repaid any amount and the petitioner is in the habit of getting the loan from her husband and repaid the same.

11.It is further stated that, the petitioner has not returned the loan amount of Rs.4,00,000/- and it is not correct that the petitioner has issued Ex.R.1 to R.4, four cheques bearing Nos.818388 to 818391.

12.The defence raised by the petitioner is that the petitioner never borrowed any money from the complainant at any point of time, instead he borrowed a sum of Rs.4,00,000/- from the complainant's husband Muthusamy. Two years prior to the case, at the time of giving the loan, the said Muthusamy obtained one post dated cheque for Rs.4,00,000/- filled by the petitioner/accused, and many other cheques for Rs.12,000/- for interest in the name of his wife Athayee, the respondent whenever he was present in local used to give interest to the complainant's husband directly and got back the cheque issued towards interest. When he was out of station, he asked the complainant's husband to present the cheque for collection for interest amount, when the petitioner/accused repaid the entire loan amount, he closed his bank account and asked for the principal amount cheque (cash cheque), the respondent told that he lost the cheque. However, later on, the respondent, to initiate action against the petitioner, wantonly sent the cheque for collection and hence, the cheque was dishonoured.

13.The petitioner has admitted borrowal of loan and the execution of cheque. As the petitioner has not repaid the due amount, a statutory notice was issued to the petitioner. But, the petitioner has not come forward to settle the amount. Hence, proceedings was initiated under Section 138 of Negotiable Instruments Act against the petitioner. Further, it is stated by the petitioner that he has repaid the entire loan amount.

14.Admittedly, there is no oral or documentary evidence to show that the respondent repaid the said amount. Therefore, both the Courts below, rightly came to the conclusion that the cheque was issued for legally enforceable debt. Hence, there is no doubt about it is for the petitioner to rebut the presumption.

15.Even though in the criminal cases, the accused need not enter into witness box or need not give any direct evidence, in this case, the execution of cheque, signature and borrowal of the amount were admitted. The defence taken by the petitioner/accused is that he repaid the entire amount, he asked to return the cheque. But the respondent told that he missed the cheque hence he simply left it. But he has not produced any of the documents to show that he repaid the amount. One he admitted the liability and taken plea of discharge it is for him to rebut the legal presumption. Therefore, under such circumstances, the statutory presumption has not been rebutted in the manner known to law.

16.In such circumstances, the trial Court, after considering the entire evidence, has rightly convicted the accused and sentenced him as stated above and the same was rightly confirmed by the first appellate Court and I find no illegality or irregularity or perversity in the judgment of the trial Court and there is no reason to interfere with the order passed by the first appellate Court.

17.Since the first appellate Court is a fact finding Court, which recorded the reasons for its finding as to whether the petitioner has committed offence under Section 138 of the Negotiable Instruments Act while exercising its power, this Court cannot sit in the armchair of the appellate Court and re-appreciate the evidence let in by the parties.

In the result, the Criminal revision petition fails and the same is dismissed. Consequently connected Criminal miscellaneous petition is closed. The judgment of the lower appellate Court dated 21.01.2014 in C.A.No.37 of 2014 on the file of the Learned Principal Sessions Judge, Namakkal is confirmed. The trial Court is directed to secure the accused and send him to jail for serving the remaining period of sentence if any. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cla

To

1. The Principal Sessions Judge,
   Namakkal.

2. The Judicial Magistrate No.1,
   Namakkal.

3.The Public Prosecutor,
   High Court, Madras 104.

Crl.R.C.359 of 2014

and
M.P.No.4 of 2014

ss[co]
srg 09/09/2019