



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.R.C (MD) No.13 of 2018

WEB COPY

Murugesan

: Petitioner/Appellant/
Accused

Vs.

Poongodi

Respondent/Respondent/

:

Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed in Crl.A.No.25 of 2014 on the file of the Additional District and Sessions Court, Theni at Periyakulam confirming the judgment passed on 03.08.2017 in S.T.C.No.77 of 2013 on the file of Judicial Magistrate (Fast Track Court), Theni at Periyakulam dated 21.04.2014 and allow this Criminal Revision Petition.

For Petitioner : Mr.H.Velavadhas

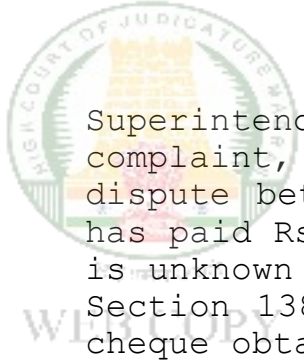
For Respondent : No appearance

ORDER

This Criminal Revision case is filed against the judgment dated 03.08.2017 in Crl.A.No.25 of 2014 passed by the learned Additional District and Sessions Court, Theni at Periyakulam confirming the judgment passed by the learned Judicial Magistrate (Fast Track Court), Theni at Periyakulam in S.T.C.No.77 of 2013 dated 21.04.2014.

2.The Court notice was issued to the respondent and the same was received on 01.02.2018 by the respondent. However, no representation, since her name is printed in the cause list today.

3.The learned counsel for the petitioner would submit that he had money transaction with one Maharajan of V.O.C Street, Samatharmapuram, Theni and he was paying an exorbitant interest of Rs.1,200/- per month for the loan amount of Rs.20,000/-. In spite of paying around Rs.1,00,000/-, he did not discharge him from the debt and he and his friend Saravanan have threatened and obtained signature in the blank white paper and also in his cheque leaf. Alleging that, he gave a complaint on 21.01.2013 to the



Superintendent of Police, Theni District. Pursuant to this complaint, the police has enquired the matter and compromised the dispute between him and Maharajan. Pursuant to the compromise, he has paid Rs.50,000/-. While so, the respondent herein Poongodi, who is unknown to the revision petitioner, has filed a complainant under Section 138 of Negotiable Instruments Act, making use of the blank cheque obtained from him by Maharajan under threat. As per the said complaint, the respondent has alleged that a sum of Rs.2,00,000/- was borrowed by the revision petitioner on 09.11.2012 and in order to discharge the said debt, he gave a cheque dated 18.12.2012. When the same was presented for collection, the cheque was returned with an endorsement "insufficient fund". Again the cheque was represented on 15.02.2013 at State Bank of Travancore on 26.02.2013, which was returned for stop payment. After serving the statutory notice, complaint has been filed under Section 138 of the Negotiable Instruments Act. The trial Court after considering the evidence let in by the complainant and the accused and the documents marked on either side, had found the revision petitioner/accused guilty and sentenced him to undergo 6 months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment. The appellate Court has also confirmed the same, holding that the accused has not rebutted the statutory presumption available to the complainant. Aggrieved by that, the present criminal revision case has been filed.

4.The learned counsel appearing for the revision petitioner would emphasis that the complaint Ex.D.1 given to the Superintendent of Police, about the high-handedness of Maharajan and Saravanan and the evidence of the complainant, who is a person unknown to the revision petitioner are suffice to rebut the presumption. The subject cheque was not issued to any legally enforceable debt. While so, the trial Court, just because the signature found in the subject cheque is that of the revision petitioner, has held against the revision petitioner and erroneously convicted him.

5.The learned counsel for the revision petitioner drawing the attention of this Court to the deposition of the complainant- P.W.1, particularly pointed out that in the complaint, it is stated that the accused is running the saloon shop. In fact the accused/revision petitioner is running the laundry shop. While deposing before this Court, P.W.1 has admitted that in the complaint, she has mentioned that the accused is running the saloon shop. However, she has to correct herself to say that the accused is running the laundry shop. It is also in the cross-examination, she has elicited that she knows Maharajan of Samatharmapuram. She admits in the cross-examination that she does not know the residential address of the accused person.

6.In the said circumstances, the learned counsel vehemently argued that when the complainant herself has admitted that she has no wherewithal to lend Rs.2,00,000/- and on previous occasion, she used to lend Rs.1,000/- or Rs.2,000/- as loan to the accused person



and she has not explained under what circumstances she has lent Rs.2,00,000/- to the accused. By preponderance of probability having rebut the presumption, the Court below ought to have accepted the explanation and acquitted the revision petitioner.

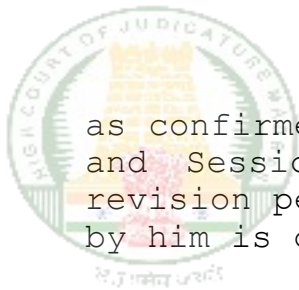
7.This Court, on perusing the deposition of P.W.2, finds force in the argument of the revision petitioner. The specific case of the respondent in her complaint is that she lent Rs.2,00,000/- to the revision petitioner to meet his urgent family needs. In order to discharge the said debt, he gave the subject cheque dated 18.12.2012. First time, when she presented it, it was bounced for insufficient of funds. Again she has represented the cheque, according to the request and instruction of the drawer. In the complaint, she has made a specific averment that she and the revision petitioner are known to each other. He borrowed the money on 19.11.2012 at her residence and within one month, he gave a cheque to discharge the said debt, but in the cross examination she admits that she does not even know the residential address of the revision petitioner/accused. She admits that her dealing with the revision petitioner was only to the extent of Rs.1,000/- and 2,000/- and not more than that. She also

admits that she knows Maharajan of Samatharmapuram, Theni District.

8.Her admission, in the light of the complaint given to the Superintendent of Police, Theni District on 21.01.2013, goes to show that the blank cheque, which was given to Maharajan of Samatharmapuram, has been misused to file the complaint under Section 138 of the Negotiable Instruments Act in the name of Poongodi, who is also happened to be wife of one Maharajan. When the statutory presumption against the accused person is rebutted through some material evidence, though may not be to the decree of proof beyond doubt, the preponderance of probability would go to show that the cheque, which was obtained under threat and the subject matter of the complaint dated 21.01.2013, is being utilised to prosecute the revision petitioner through the complainant/Poongodi, who apparently not acquainted with the revision petitioner, except a tall claim that she and the revision petitioner know each other for merely 12 years. It is unacceptable that the person, who know each other for 12 years and was inspired her confidence, to lend the loan of Rs.2,00,000/-, but without knowing his residential address.

9.On cumulative assessment of the evidence, this Court finds that Courts below have erred in properly appreciating the defence explanation to rebut the presumption. Hence, this Criminal Revision Case is liable to be allowed.

10.In the result, this Criminal Revision Case is allowed and the conviction and sentence passed in S.T.C.No.77 of 2013 by the learned Judicial Magistrate, Fast Track Court, Theni at Periyakulam



as confirmed in C.A.No.25 of 2014 by the learned Additional District and Sessions Judge, Theni at Periyakulam are set aside. The revision petitioner/accused is acquitted. Fine amount, if any, paid by him is ordered to be refunded forthwith.

WEB COPY

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

cp

To

- 1.The Additional District and Sessions Judge,
Periyakulam, Theni.
- 2.The Judicial Magistrate (Fast Track Court),
Periyakulam, Theni.

+1cc to Mr.H.Velavadhas, Advocate in SR No.81545

Cr1.R.C(MD)No.13 of 2018

NM/SR/SAR IV/15.10.18/4P/4C