

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.R.C.NO.76 OF 2019

AND

CRL.M.P.NO.752 OF 2019

M.Muthukrishnan

...Petitioner/Accused

-Vs-

M.Govindarajalu

...Respondent/Complainant

This Criminal Revision Petition filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 15.11.2018 passed by the XVIII Additional Sessions Court, Chennai, in C.A.No.298 of 2018 confirming the conviction and sentence passed by the learned Metropolitan Magistrate, Fast Track Court - I, Egmore, dated 13.04.2018 made in C.C.No.8752 of 2014.

For Petitioner : Mr.Amar D Pandiya

For Respondent : Mr.K.Muthamil Raja

O R D E R

The petitioner is accused and respondent is complainant. The respondent filed a private complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (in short 'NI Act'), which was taken on file in C.C.No.8752 of 2014 by the learned Metropolitan Magistrate (Fast Track Court) I, Egmore, Chennai. The learned Magistrate, after trial found the accused guilty of offence punishable under Section 138 of NI Act and hence by judgment dated 13.04.2018 convicted the petitioner/accused and sentenced to undergo simple imprisonment for a period of nine months and fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of two months. Aggrieved against the judgment of conviction, the petitioner/accused has preferred an appeal before the XVIII Additional Sessions Judge, Chennai, in C.A.No.298 of 2018. The learned Sessions Judge, after adverting to the materials placed on record and after hearing both the parties, by judgment dated

15.11.2018, dismissed the appeal and confirmed the judgment of conviction made by the trial Court, against which, the petitioner/accused has preferred the present revision before this Court.

2 According to the learned counsel for the petitioner, the petitioner has borrowed only Rs.1,00,000/- by two instalments i.e. Rs.75,000/- and Rs. 25,000/-, but not Rs.4,00,000/- lakhs as alleged by the respondent/complainant. The respondent has not stated any specific date as to when the borrowal has taken place. In order to prove his defence, the petitioner has examined four witnesses. D.W.2, one Ravi, has introduced the respondent and the petitioner did not know the respondent directly and in such event, it is not believable that the respondent given Rs.4.00 lakhs to the petitioner. The petitioner has rebutted the presumption, which was drawn in favour of the respondent/complainant, but, both the Courts below have failed to consider the same and erroneously convicted the petitioner, which warrants interference.

3 The learned counsel for the respondent would submit that the petitioner borrowed a sum of Rs.4.00 lakhs for his urgent family needs and on demand he issued a cheque bearing No.986459 dated 21.05.2014 for a sum of Rs.4.00 lakhs. The respondent/complainant presented the cheque on 21.05.2014 and the same was returned with an endorsement "Funds Insufficient" and therefore he issued a legal notice dated 30.05.2014 to the petitioner/accused. The petitioner/accused even after receipt of the notice, neither sent any reply nor settled the dues and hence the respondent filed a complaint. Both the Courts below have rightly held that the petitioner committed offence under Section 138 of Negotiable Instruments Act.

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

5 The petitioner filed this revision against the concurrent judgments of conviction made by both the Courts below. The petitioner/accused admitted his signature and execution of cheque. He also admitted that there was money transaction, but not as stated by the respondent/complainant and the petitioner borrowed only Rs.1.00 lakh and the cheque was issued towards security for the said loan. Under these circumstances, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or probable defence or through cross examining the witnesses. In

this case in order to prove the defence of the petitioner/accused, he examined four witnesses and the evidence of D.W.2 is not supporting the case of the petitioner/accused. The petitioner has not produced any document showing that the petitioner borrowed only Rs.1.00 lakh, not Rs.4.00 lakhs as alleged by the respondent/complainant. On reading of the entire materials placed on record, it reveals that the petitioner/accused has failed to rebut the presumption drawn in favour of the respondent/complainant. This Court does not find any perversity in the order of both the Courts below and there is no merit and substance in the revision case.

6 In the result, the criminal revision case is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The XVIII Additional Sessions Court, Chennai.
2. The Metropolitan Magistrate, Fast Track Court - I, Egmore, Chennai.

+lcc to Mr.Amar D Pandiya, Advocate, S.R.No.29041

+lcc to Mr.K.Muthamil Raja, Advocate, S.R.No.28449

CrI.R.C.No.76 of 2019 and

CrI.M.P.No.752 of 2019

VGII(CO)

CS/06/02/2020

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