

The Petitioner/Accused herein viz S.Sithaiyan S/o Seerangan, was released on bail as per order of this Court dated 14/09/2018 in CrI MP No.12228 of 2018 in CrI Rc No.1042 of 2018.

Dated : 27.03.2019

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

S.Sithaiyan ...Petitioner/Respondent/Accused

S.Mariappan ...Respondent/Appellant/Complainant

For Petitioner : Mr.M.Senthilkumar

For Respondent : Mr.A.M.Esakiappan

ORDER

2.The Revision Petitioner is the accused and the respondent is the complainant.

3.The respondent filed a private complaint under Section 200 of the Code of Criminal Procedure against the revision petitioner/accused for offence under Section 138 of Negotiable Instrument Act, before the learned Judicial Magistrate II, Mettur, Salem District. The learned Judicial Magistrate after completing the legal formalities, taken the complaint on file in C.C.No.141 of 2010. The complainant examined himself as PW-1 and 2 other witnesses as PWs.2 and 3 and marked 4 documents viz.,Ex.P.1 to Ex.P.4. On the side of the revision petitioner / accused, two witnesses were examined as DW1 and DW2 and no document was marked.

4. On appreciation of materials before it, trial Court, under judgment dated 06.07.2017, dismissed the complaint and acquitted the revision petitioner/accused. Aggrieved over the same, the respondent /complainant had filed an appeal in Criminal Appeal No.96 of 2017 on the file of the learned Additional District (Fast Track) Court, Mettur. The lower appellate Court, after hearing the arguments, under judgment dated 16.02.2018, set aside the judgment of trial Court and convicted the revision petitioner/ accused for offence under Section 138 of the Negotiable Instrument Act and sentenced him to undergo one year simple imprisonment with fine Rs.1,00,000/-, in default, three months simple imprisonment and directed that the fine amount be paid to the respondent/complainant for the loss caused to him by the offence committed by the accused and for mental agony and expenses incurred by him for the prosecution. There against, the present revision has been filed before this Court.

5.The learned counsel for the revision petitioner would submit that the signature found in the cheque was that of the petitioner but he denied the he has not filled the cheque. Therefore, it is for the complainant to prove his case that the accused has executed and issued the cheque for legally enforceable debt, but he has failed to do so. Taking into consideration that the respondent/complainant has not proved his case that the subject cheque was issued towards legally enforceable debt, trial Court, has rightly dismissed the complaint and acquitted the revision petitioner. However, the lower appellate Court has erroneously arrived at a finding of conviction merely on the reasoning that the signature found in the cheque was that of the revision petitioner and he has not denied the same. Submitting as above, the learned counsel prays that the order of the lower appellate Court warrants interference by this Court.

6. The learned counsel for the respondent/complainant would submit that the petitioner has admitted the signature found in

the cheque. It is his case that he borrowed money from complainant and repaid the same. However, to substantiate the same, petitioner has not filed any document. As per Section 118 and 138 of Negotiable Instruments Act, once execution of cheque has been admitted, it is the duty of the accused to rebut the statutory presumption in the manner known to law. The petitioner has not produced any document in support of his contention that he had repaid the amount borrowed from the complainant and the trial Court has erroneously dismissed the complaint. However, the lower appellate Court has rightly appreciated the facts of the case and arrived at a finding of conviction, which requires no interference by this Court.

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

8. It could be seen that on 26.04.2010, petitioner borrowed a sum of Rs.89,300/- for his family and business expenses from the respondent and for repayment of the same, he had issued Ex.P1, Cheque bearing No.037672, dated 26.04.2010 and when the same was presented for collection on 29.09.2010, it was returned 'for want of sufficient funds'. The respondent/complainant has also received a memo from his bank. After receiving the same the respondent/complainant issued statutory notice to the revision petitioner/accused on 15.10.2010, which was received by the revision petitioner/accused on 22.10.2010. Despite receipt of statutory notice, petitioner/accused has neither replied to the notice nor repaid the money demanded by the complainant in the statutory notice. Therefore, the respondent/ complainant constrained to file a private complaint before the learned Judicial Magistrate against the revision petitioner /accused for the offence under Section 138 of Negotiable Instrument Act.

9. The petitioner/accused took two defences, one is contrary to another. When the complainant proved his case by examining himself as one of the witnesses that the accused borrowed hand loan from the complainant and issued the cheque, Ex.P1 to the complainant. The petitioner has not denied the signature found in the Ex.P1 cheque. However, the respondent has proved his initial burden. Then Court has to necessarily draw the statutory presumption that the cheque was issued only to discharge legally enforceable debt or liability. It is for the petitioner to rebut the statutory presumption in the manner known to law. But the accused failed to rebut the presumption. One of the defence taken by the petitioner is that the complainant is running a chit fund, the revision petitioner/ accused is a subscriber and issued the cheque for repayment of money. But he has not proved the repayment of the said money. Once he admitted the signature in the cheque then there is a statutory presumption that the cheque was issued to discharge legally enforceable debt. No

doubt, this presumption has to be rebutted by the petitioner in the manner known to law. Mere bald defence is not sufficient to rebut the presumption. The defence should be supported with sufficient materials. When it is the case of petitioner/accused that he repaid the amount borrowed from the complainant, then he should have taken steps to get back the subject cheque. However, petitioner/accused has not chosen to reply to the statutory notice nor has taken any step to get back the subject cheque. It is well settled proposition of law that the accused need not rebut the presumption by direct evidence, he can very well rebut the presumption by preponderance of possibilities or probable defence or even through cross-examination of the witnesses. Admittedly, in this case, oral evidence was examined on the side of defence. But he has not substantiated his defence by providing material documents. Even during cross examination, no question has been raised in connection with the defence taken by the petitioner. Though both the defences taken by the revision petitioner /accused is contradictory to each other, he has not proved any one of the defence in the manner known to law.

10. It is settled proposition of law while exercising revisional jurisdiction, a Court can only find out whether there is any perversity or illegality in the impugned order and it cannot re-assess and re-appreciate the entire evidence. In this regard it is pertinent to refer the decision of the Hon'ble Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice....".

On a reading of the judgments of both the courts below, this Court finds that the lower appellate Court, on a proper appreciation of materials and documents, had arrived at an independent conclusion that the petitioner/accused has committed the offence u/s.138 of the Negotiable Instruments Act and accordingly, convicted and sentenced him as stated above. This Court does not find any perversity or illegality in the judgment

under challenge and the same does not warrant any interference.

11.The Criminal Revision shall stand dismissed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

may

To

- 1.The Additional District Judge, (Fast Tract) Court
Mettur, Salem district.
- 2.The Judicial Magistrate No.II
Mettur, Salem District.
3. The Chief Judicial Magistrate, Salem
4. The District Collector, Salem
5. The Deputy General of Pulic,
Mylapore, Chennai
6. The Public Prosecutor,
High Court, Madras

+1cc to Mr.M.Senthilkumar, Advocate SR.No.30635

+1cc to Mr.A.M.Esakiappan, Advocate SR.No.29682 (26/08/2019)

सत्यमेव जयते Criminal R.C. No.1042 of 2018

RJ I (CO)
GMY (01/07/2019)

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