IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 03.04.2019
CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.RC.NO.209 OF 2019
AND
CRL.M.P.NOS.2115 & 2117 OF 2019

Hemasree ... Petitioner

-Vs-

Mr.K.Padmanabhan Nair ... Respondent

PRAYER:- Criminal Revision Case filed under Sections 379 and 401 of Cr.P.C., to set aside the Judgment in C.A.No.125 of 2018 dated 17.12.2018 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the Judgment of the learned Judicial Magistrate, Fast Track Court No-1, Coimbatore in C.C.No.11 of 2015 dated 08.05.2017, and call for the records and acquit the Revision Petitioner from all the charges.

For Petitioner : Mr.G.Thyagarajan
For Respondent : Notice Served (No Appearance)

J U D G M E N T

The revision petitioner is the third accused and the respondent is the complainant. The case of the respondent/complainant is that the petitioner/accused-3 is one of the parter in a partnership concern. The petitioner/third accused was in urgent need of Rs.13,00,000/- for clearing the mortgage loan and requested the complainant to pay the same and also assured that the said amount will be repaid within 25 days. Believing the words of the petitioner/third accused, the complainant withdraw a sum of Rs.13,00,000/- from the South Indian Bank, Sungam Branch from his fixed deposit as loan and handed over the cash to the petitioner/ third accused on 11.11.2009. To discharge the same, the petitioner/third accused issued a post dated cheque for Rs.13,00,000/- bearing Cheque No.956195 dated 05.12.2009 drawn on Indian Bank, Ramnagar Branch, Coimbatore. As per the advise of the petitioner/third accused, the complainant presented the cheque on 02.03.2010, in the South Indian Bank, Sungam Branch, Coimbatore and the same was returned for want of sufficient funds. As intimated by the Accused-2, the complainant again presented the cheque on 02.06.2010 in his bank and it was also returned for want of sufficient funds. Hence, the complainant issued a legal notice through his counsel to all the three accused on 15.06.2010 calling upon them to pay the amount within 15 days. The accused received the said legal notice on 21.06.2010. The second accused deliberately and wantonly caused to return the notice unserved. The 3rd accused alone received the notice on 21.06.2010. After receiving the notice, the accused did not pay the amount, but issued a reply on 29.07.2010. Therefore the respondent herein filed a private complaint before the learned Judicial Magistrate, Fast Track at Magisterial Level-1, Coimbatore, under Section 200 of Cr.P.C., for the offence under Section 138 of Negotiable Instruments Act. After taking cognizance of the complaint and completing the legal formalities, in order to prove the case of the complaint, two witnesses were examined and 28 documents were marked.

2 After completion of complainant side evidence when the incriminating materials culled out and put before the accused, she denied the same as false and also on the side of the accused three witnesses were examined and six documents were marked. After completing the trial and also considering oral and documentary evidence, the learned Judicial Magistrate, Fast Track Court No-1, Coimbatore, found the accused guilty for offence under Section 138 of Negotiable Instruments Act and convicted and sentenced to undergo Simple Imprisonment for a period of 1 year and imposed compensation of Rs.13,00,000/- to the complainant within 2 months, in default to undergo simple imprisonment for a further period of 2 months. Challenging the judgment of the learned Judicial Magistrate, Fast Track Court No -I, Coimbatore, the petitioner has filed an appeal before the learned Principal District and Sessions Judge, Coimbatore, in Crl.A.No.125 of 2017. After hearing of arguments on either side, the learned III Additional District and Sessions Judge, Coimbatore dismissed the appeal and confirmed the judgment of the learned Judicial Magistrate, Fast Track Court No-I, Coimbatore, Challenging the Judgment of the learned III Additional District and Sessions Judge, Coimbatore, in C.A.No.125 of 2017 dated 17.12.2018, the petitioner has preferred the present revision case before this Court.

3 The learned counsel for the petitioner would submit that the revision petitioner herein was not a partner during the relevant point of time. It is unclear as to how the trial Court has relied only upon the Ex.P1 without ascertaining the date of admission of the petitioner herein as partner of the firm. The lower appellate Court failed to consider these aspects. There is a material contradiction regarding the partners those who are looking for the day to day affairs of the firm and also as to whether they have issued a cheque in individual capacity. It is further submitted that in this case third accused was not a

partner at the time of the occurrence. The learned counsel for the petitioner submitted that the respondent/complainant has not established that the third accused was a partner of the first accused firm at the time of the occurrence. Both the Courts failed to consider this aspect. Hence, the learned counsel for the petitioner prays to allow this Criminal Revision Case.

4 The learned counsel for the respondent would submit that, admittedly, the first accused is the partnership concern and the second and the third accused are the partners, and they borrowed a a sum of Rs.13,00,000/- and issued a cheque. A2 and A3 are the partners and they are liable to pay the cheque amount but they have not done so. The revision petitioner is the partner and she has to establish that at the relevant point of time, the revision petitioner/third accused was not the partner at the time of occurrence. A2 and A3 borrowed a sum of Rs.13,00,000/- and executed the cheque in favour of the respondent/complainant and when the cheque was presented, the same was returned for want of sufficient funds. Thereafter, the complainant sent a statutory notice to the petitioner/third accused. The petitioner sent a reply with false averments. Therefore, the complainant/respondent filed a private complaint under Section 200 of Cr.P.C., and the complainant was examined as P.W.1 and marked all the documents. The respondent also admitted all the transaction and only they have stated that the cheque was not issued for the reason stated in the complaint. It was issued for security purpose. The petitioner/accused did not rebut the statutory presumption and therefore the cheque was issued for legally enforceable debt. Hence, the learned counsel for the respondent prays to dismiss the revision case.

5 Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

6 The case of the respondent/complainant is that the petitioner/third accused is the parter of partnership concern. The petitioner/third accused was urgently in need of a sum of Rs.13,00,000/- for clearing the mortgage loan and requested the complainant to pay the same, and also assured that the said amount will be repaid within 25 days. Trusting and believing the words of the petitioner/third accused, the respondent herein withdrew a sum of Rs.13,00,000/- from the South Indian Bank, Sungam Branch as loan from his fixed deposit and handed over the cash to the petitioner/third accused on 11.11.2009. To discharge the same, the petitioner/third accused issued a post dated cheque for Rs.13,00,000/- bearing cheque No.956195 dated 05.12.2009 drawn on Indian Bank, Ramnagar Branch, Coimbatore. As per the advise of the 2nd accused, the complainant presented the cheque on 02.03.2010 to his bankers and the same was returned

for want of sufficient funds. Therefore, the respondent/ complainant issued statutory notice through his counsel to the petitioner/third accused and the same was received by the petitioner/third accused and not sent any reply.

7 The respondent/complainant himself was examined as P.W.1 and also deposed that the accused borrowed a sum of Rs.13,00,000/-. The execution is admitted and the cheque was not issued for discharging the legally enforceable debt, but, only for the security purpose they issued a cheuqe. Once they admitted the signature and execution there is a statutory presumption under Section 139 of Negotiable Instrument Act, the cheque issued for legally enforceable debt. No doubt the said presumption is rebuttable presumption. The accused has to rebut the presumption in the manner known to law. The first and second accused have not filed any appeal against the judgment passed by the III Additional District and Sessions Judge, Coimbatore, only the third accused alone has filed present revision before this Court, stating that on sole ground that she was not a partner of the first accused firm at the relevant point of time. She has to establish that she was not a partner at that time of issuance of cheque in favour of the respondent. Moreover, on the side of the Revision petitioner the execution of the cheque and the signature in that cheque are not at all denied.

8 It is pertinent to note that the 3rd accused only challenged the Judgment of the Lower Appellate Court. Now, the contention raised by the present revision petitioner is that on reading of the entire judgment and evidence recorded by the Magistrate and also the judgment of the Magistrate they have clearly given the reason for convicting the present revision petitioner/third accused. Initially the accused have admitted the execution of the cheque and the signature found in the cheque. Subsequently, it is stated that the petitioner/third accused was not a partner of the first accused firm at the time of occurrence. But the documents produced by the petitioner not established that the documents related to the first accused partnership. Further, the name of the partnership firm is not mentioned, in the document filed by them. So, the main defence taken by the respondent 1 and 2 that they issued the cheque for some of the parties. Both the Courts reject the defence taken by the revision petitioner. The petitioner/third Accused have not rebut the presumption in the manner known to law.

9 Therefore, they have not established that the third accused was not the partner at the relevant point of time. The lower appellate Court is the final Court of fact finding and it can re-appreciate and re-assess the entire evidence independently with the materials available on records before it and by considering the suggestions put by the petitioner/third

accused before the respondent during the deposition also. Once the petitioner has admitted the execution of the cheques and not denied the signature, both the Courts below have rightly drawn the statutory presumption under Section 139 of Negotiable Instruments Act. It is for the accused to rebut the presumption in the manner known to law. However, they have not established the defence taken by them and substantiate the documentary evidence and the documents relied on by the respondent also not established that it is related to the revision petitioner. Since this Court is a revisional Court, while exercising the revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in the appreciation of evidence while deciding the case by the Courts below. But at the same time while deciding the case this Court has to see whether the trial Court has properly appreciated the evidence.

10 Both the Courts as stated that the revision petitioner/third accused has not established the partner at that time. But admittedly, in the document, the name of the first accused is partnership firm has not been mentioned.

11 Therefore under these circumstances, this Court finds that there is no perversity in the order passed by the trial Court, and this Court does not find any merit in this revision case. Accordingly, this present Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbn
To
1. The III Additional District and Sessions Judge,
   Coimbatore.
2. The Judicial Magistrate,
   Fast Track Court No-I, Coimbatore.

+1cc to Mr.G.Thyagarajan, Advocate, S.R.No.32643

Crl.RC.No.209 of 2019
and
Crl.M.P.Nos.2115 & 2117 of 2019

PA(CO)
CS/05/12/2019