



Bail Slip

The Petitioner/Accused namely C.Saravanan S/o.P.Chandran Age 46 years was directed to be released on bail as per order of this court dated 25/09/12 made in MP. 1/2012 in CrI.R.C.No.1208/2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1208 of 2012

C.Saravanan

.. Petitioner/Appellant/Accused
Vs.

A.Lingappan

.. Respondent/Respondent/Complainant

Criminal Revision filed under Sections 397(i) and 401 Cr.P.C., praying to set aside the judgment dated 16.03.2012 made in CrI.A.No.23 of 2012 passed by the learned Additional District Sessions Judge, Fast Track Court No.4, Bhavani, confirming the judgment dated 16.12.2011 made in S.T.C.No.224 of 2009 passed by the learned Judicial Magistrate, Bhavani.

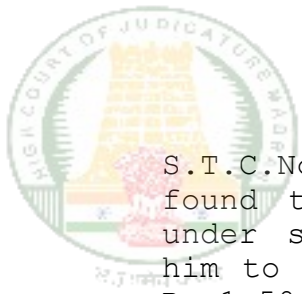
For Petitioner : Mr.N.Manokaran

For respondents: Mr.R.Marudhachalamurthy

O R D E R

This Criminal Revision Case has been filed to set aside the judgment dated 16.03.2012 made in CrI.A.No.23 of 2012 passed by the learned Additional District Sessions Judge, Fast Track Court No.4, Bhavani, confirming the judgment dated 16.12.2011 made in S.T.C.No.224 of 2009 passed by the learned Judicial Magistrate, Bhavani.

2. The revision petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint under Section 200 Cr.P.C against the revision petitioner for the offence under Section 138 of Negotiable Act before the learned Judicial Magistrate, Bhavani and the same was taken on file in



S.T.C.No.224 of 2009. After enquiry, the learned Magistrate found that the revision petitioner is guilty for the offence under section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a sum of Rs.1,50,000/- to the complainant as compensation by a judgment dated 16.12.2011. Challenging the said judgment of the learned Magistrate, the accused preferred an appeal in Crl.A.No.23 of 2012 before the learned District and Sessions Judge, Erode. The said appeal was made over to the learned Additional District and Sessions Judge, Fast Track Court No.4, Bhavani. After hearing the arguments on either side and perused the materials, the learned Sessions Judge, dismissed the appeal on 16.03.2012 and confirmed the judgment of the trial Court. There against, the accused has preferred the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that one Mohan was conducting chit transaction and the revision petitioner participated in that chit and also took a chit. For the repayment of chit amount, the revision petitioner issued two cheques viz., (i) bearing No.160280 dated 15.08.2008 for a sum of Rs.80,000/- and (ii) 160279 dated 18.08.2008 for a sum of Rs.80,000/- towards security to the said Mohan, who is the founder of the chit. After repayment of the entire subscription, the said Mohan did not return the blank cheques issued by the revision petitioner/accused. Subsequently, after receiving notice from the respondent/complainant, the revision petitioner/accused realised that the cheques issued to Mohan were misused and the said Mohan set up the respondent herein/complainant to file the present complaint. Though the revision petitioner/accused established his defence by examining himself as RW-1, neither the learned Magistrate nor the learned Sessions Judge have appreciated the evidence of RW-1 and convicted him. It is a well settled law that the defence of the accused need not be established by direct evidence, it can be done through the preponderance of probabilities or probable defence even otherwise thorough cross examination of the witness. In this case, the revision petitioner examined himself as RW-1 and also put suggestion before PW-1 that he joined a chit fund to one Mohan and he took the chit amount, for the repayment of the subscription, he issued two cheques towards security purpose. After repaying the subscription, the said Mohan did not return the cheque and misused the same to file this complaint. There is no money transaction between the revision petitioner and the respondent and the revision petitioner never given a cheque to the respondent. Both the Courts failed to consider the defence taken by the revision petitioner, which warrants interference.



4. The learned counsel appearing for the respondent would submit that the revision petitioner and the respondent are known to each other. On 15.05.2008, the revision petitioner/accused borrowed a sum of Rs.1,50,000/- from the respondent for his urgent needs by promising to repay the amount within three months with an interest of 24% per annum, for which, the revision petitioner issued two post-dated cheques, each for a sum of Rs.80,000/- towards security. When the revision petitioner did not repay the amount, the respondent presented the cheques for collection and the same were returned as "Account Closed". After receipt of the Memo from the Bank on 22.08.2008, the respondent issued a statutory notice on 06.09.2008 through an advocate. The said notice was received by the revision petitioner on 08.09.2008. Even after receipt of the notice, the revision petitioner neither repaid the money nor sent any reply. Therefore, the respondent filed a private complaint before the learned Judicial Magistrate, Bhavani for the offence under Section 138 of The Negotiable Instruments Act in S.T.C.No.224 of 2009. Therefore, the respondent/complainant has proved his initial burden. Once the signature is not in dispute, it is for the revision petitioner/accused to rebut the presumption. In this case, the revision petitioner/accused has not rebutted the presumption. Therefore, both the Courts below rightly held that the revision petitioner/accused was found guilty of the offence under Section 138 of the Negotiable Instruments Act and the Appellate Court dismissed the appeal on the ground that there was no substantial ground to interfere with the judgment of the trial Court.

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

6. It is the case of the respondent/complainant that the petitioner/accused borrowed a sum of Rs.1,50,000/- from the respondent/complainant for his urgent needs and for the repayment of the said amount, he issued two post-dated cheques. When the revision petitioner/accused did not repay the said money, the respondent/complainant presented the cheques for collection and the same were returned as "Account closed" and the same was intimated to the revision petitioner/accused by way of statutory notice. Since the petitioner/accused not repaid the money as demanded in the statutory notice, the respondent/complainant was constrained to file the private complaint before the learned Magistrate and also marked all the relevant documents.



7. On reading of the evidence of PW-1/the respondent-complainant, it is seen that he has clearly stated the facts as mentioned in the complaint and he has also proved his initial burden that the signature of the revision petitioner in the cheques were not in dispute. The only defence taken by the revision petitioner is that the alleged cheques were issued to one Mohan for chit transaction towards security purpose. After repayment of the entire subscription, the said Mohan did not return the signed cheques, which were handed over to him for security purpose. The said Mohan misused the cheques through the respondent/complainant. There was no transaction between the revision petitioner and the respondent. When the said suggestion was put before PW-1 by the defence counsel, the same was stoutly denied by the respondent/complainant. Though the revision petitioner himself was examined as RW-1, he has not filed any documents to show that there was chit transaction and he issued the said cheques to one Mohan for security purpose. The revision petitioner/accused has stated that one Sivakumar know the same, whereas, the said Sivakumar was not examined and he has not filed any documents to prove the same. Once the signature in the disputed cheques are not denied and execution of the cheques are admitted, there is a statutory presumption that the cheques were issued for discharging legally enforceable debt. No doubt the said presumption is rebuttable presumption. Once the complainant has established his initial burden, it is for the accused to rebut the statutory presumption that the cheques were not issued for legally enforceable debt and the same were issued for other purpose. Admittedly, the revision petitioner has attempted to take the defence that the cheques were issued to one Mohan during the chit transaction for security purpose. Absolutely there is no evidence to show that there was chit transaction and the cheques were issued to Mohan, but not to the respondent. Mere bald allegations is not sufficient, it has to be substantiated by sufficient evidence in the manner known to law. In this case, though the revision petitioner taken the defence, he failed to establish his defence in the manner known to law.

8. In the above circumstances, this Court finds that the rebuttable presumption available to the revision petitioner/accused, he has not been rebutted in the manner known to law. Both the Courts below elaborately discussed the evidence of the respondent/complainant and rejected the defence taken by the revision petitioner/accused. The lower Appellate Court, being the final Court of fact finding, rightly appreciated oral and documentary evidence and found the revision petitioner/accused guilty for the offence under Section 138 of Negotiable Instruments Act. This Court, as the Revisional Court, does not find any reason to take a different view as already found that the petitioner has not rebutted the statutory



presumption in the manner known to law. This Court cannot sit in the arm chair of the Appellate Court and re-appreciate the entire evidence. This Court does not find any perversity in the appreciation of evidence and there is no reason to interfere with the judgments of the Courts below.

9. Accordingly, this Criminal Revision Case is dismissed. The judgment dated 16.03.2012 made in CrI.A.No.23 of 2012 passed by the learned Additional District Sessions Judge, Fast Track Court No.4, Bhavani, is hereby confirmed. The trial Court is directed to secure the accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Additional District Sessions Judge,
Fast Track Court No.4, Bhavani.
2. The Judicial Magistrate,
Bhavani.
3. The Chief Judicial Magistrate, Erode.
4. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.R.Marudhachalamurthy, Advocate sr.55762
+1cc to Mr.N.Manokaran, Advocate sr.55222

CrI.R.C.No.1208 of 2012

kk(co)
nr 27/08/2019