

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.RC.No.1320 of 2012

M/s.Annamalai Cotton Mills,
Rep by its Managing director,
P.Sundaram,
Gajjalnaickenpatti,
Salem 636 201. Petitioner/Accused

vs

M.Prabhu
(Proprietor)
M/s.Arun Textiles,
Sivanathapuram,
Vellakovil-638 111,
Kangayam T.K. Respondent/Complainant

Prayer Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure, to set aside the Judgment dated 07.03.2012 passed in C.A.No.97 of 2011 on the file of the learned Additional District and Sessions Judge, Dharapuram, confirming the judgment dated 10.08.2011 in C.C.No.202 of 2007 on the file of the learned Judicial Magistrate, Kangeyam and allow this Criminal Revision.

For Petitioner : Mr.V.Bhiman for M/s.Rugan & Arya

For Respondent : Mr.N.Manokaran

ORDER

The petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the petitioner herein for the offence under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Kangeyam. The learned Judicial Magistrate, Kangeyam, has taken the case on file in C.C.No.202 of 2007, after trial, the learned Judicial Magistrate, found guilty of the accused for the offence under Section 138 of the Negotiable Instruments Act, convicted him and sentenced to undergo one year simple

imprisonment and to pay a fine of Rs.5,000/- in default to undergo further period of three months simple imprisonment.

2 As against the said order of the learned Judicial Magistrate, Kangeyam, the petitioner herein had filed an appeal before the learned Principal District and Sessions Judge, Tiruppur, in C.A.No.97 of 2011, and the same was made over to the learned Additional District and Sessions Judge, Fast Track Court-III, Dharapuram. After hearing the arguments, the learned Additional District and Sessions Judge, dismissed the appeal and confirmed the order of the learned Judicial Magistrate, Kangeyam.

3 As against the said order of dismissal the accused has preferred the present criminal revision case before this Court.

4 The learned counsel for the petitioner would submit that the Court below failed to award the punishment of imprisonment to the company that is the sole accused being an artificial person not capable of being subjected to imprisonment and not appreciating the legal issue that though the cause title states that the company is represented by an Officer, it does not ipso fact imply that such Officer is also an accused in his individual capacity. Further he would submit that both the Court below failed to consider that there is no transaction between the petitioner and the respondent. The respondent has failed to prove that the cheque was issued to discharge the legally enforceable debt and there is no transaction between the petitioner and the respondent. Both the Courts below have failed to consider the legal as well as the factual aspects and wrongly come to the conclusion that the petitioner issued a cheque in favour of the respondent towards discharge the legally enforceable debt. The Managing director has not been added as one of the accused, which warrants interference by this Court.

5 The learned counsel for the respondent would submit that the signature found in the cheques are admitted and the execution of the cheque also admitted. The signature obtained in the police station in the earlier occasions given by the revision petitioner, after receipt of the statutory notice he gave a reply but he did not take any steps to repay the amount. The cheque has been issued by the accused is to discharge the legally enforceable debt and initial burden has been proved by the respondent. Therefore, once the initial burden is proved by the respondent, it is for the petitioner to rebut the

presumption. In this case, the petitioner has not rebutted the presumption in the manner known to law. Both the Courts below have rightly appreciated the evidence and convicted the petitioner, which does not warrant any interference by this Court.

6 Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on records.

7 In this case, the respondent herein has filed the private complaint as against the petitioner for the offence under Section 138 of the Negotiable Instrument Act. According to the respondent the petitioner herein has borrowed a sum of Rs.5,00,000/- and on the same day the petitioner issued a cheque bearing No.828772 on 07.05.2007 infavour of the respondent. The respondent presented the cheque in the bank on 14.05.2007 but the said cheque was returned, for "insufficient money". Hence, the respondent issued a statutory notice to the petitioner on 07.06.2007, which was received by the petitioner on 20.06.2007. After hearing the statutory notice the petitioner sent a reply for the same. But he did not take any steps to repay the amount. Therefore, the respondent filed a private complaint.

8 In this case, there is no dispute that the Managing Director, who is represented the company put signature on the cheque. Therefore, under these circumstances once the petitioner admitted the signature found in the disputed cheque, it is for the revision petitioner to rebut the presumption. The petitioner has issued a cheque, but he has not rebutted the presumption.

9 On reading of the entire evidence and judgment of both the Courts below it reveal that the petitioner has not rebutted the presumption in the manner known to law. The Courts below have rightly appreciated the entire oral and documentary evidence and found that the revision petitioner has committed the offence under Section 138 of the Negotiable Instrument Act and convicted the petitioner.

10 This Court being a revisional Court, while exercising the revisional jurisdiction, has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On reading of the entire materials, it is seen that the revision petitioner has committed the offence under Section 138 of Negotiable instruments Act, which was also proved. Therefore,

this Court cannot re-appreciated the evidence and does not find any perversity to take a different view in the present case on hand. Therefore, under these circumstances, this Court finds that there is not reason to interfere with the judgment of both the Courts below and there is no merit in the revision case and hence, the revision case is liable to be dismissed.

11 In the result, the Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

sbn

To

- 1.The Additional District and Sessions Court,
Dharapuram.
- 2.The Judicial Magistrate Court,
Kangayam.
3. Do- Through-The Chief Judicial Magistrate
Erode.
4. The Section Officer,
Criminal Section,
High Court, Madras

+1cc to M/s.Rugan & Arya, Advocate SR.No.66893

+1cc to Mr.N.Manokaran, Advocate SR.No.66855

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AK(CO)
GMY (24/02/2020)

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