

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.483 of 2012 and
CrI.M.P.No.1 of 2012

S.K.Thangavel ...Petitioner/Appellant/Accused

-Vs-

R.Jothi ...Respondent/Respondent/Complainant

This Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C. against the order passed by the learned Additional Sessions Judge, Fast Track Court, Namakkal in C.A.No.21 of 2011 against the judgment of the learned Judicial Magistrate-I, Namakkal in S.T.C.No.1144 of 2006 dated 21.07.2011.

For Petitioner : Mr.C.D.Johnson

For REspondent : Service not completed

O R D E R

The revision petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the revision petitioner under Section 200 of Cr.P.C. for the offence under Section 138 of Negotiable Instrument Act (hereinafter referred to as 'NI Act') before the learned Judicial Magistrate, Fast Track Court-I, Namakkal and the same was taken on file in S.T.C.No.144 of 2006. After trial, the Magistrate found the petitioner guilty for the offence under Section 138 of NI Act and convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.50,000/- as compensation to the respondent, in default, to undergo simple imprisonment for a period of three months. Challenging the said order passed by the learned Magistrate, the petitioner has filed an appeal before the learned Principal Sessions Judge, Namakkal in C.A.No.21 of 2011. The learned Sessions Judge made over the appeal to the learned Additional Sessions Judge, Namakkal for disposal. The learned Additional Sessions Judge, after hearing the arguments on both sides, dismissed the appeal and confirmed the judgment passed by the

learned Judicial Magistrate-I, Namakkal in S.T.C.No.1144 of 2006 dated 21.07.2011.

2. Challenging the said judgment dated 08.02.2012 in C.A.No.21 of 2011 passed by the learned Additional Sessions Judge, Namakkal, the petitioner has filed the present revision before this Court.

3. The case of the respondent is that the petitioner herein has borrowed a sum of Rs.50,000/- from the respondent during the first week of July, 2005. For repayment of the said amount, he has issued post dated cheque to the respondent. The respondent has presented the said cheque before the bank for encashment and the same was returned as 'account closed'. Therefore, the respondent sent statutory notice to the petitioner. The petitioner did not receive the notice and the same was returned as 'not served'. Therefore, the respondent was constrained to file a private complaint against the petitioner before the learned Judicial Magistrate-I, Namakkal in S.T.C.No.1144 of 2006. Before the trial Court, in order to prove the case, the complainant himself was examined as P.W.1 and marked the disputed cheque as Ex.P1, bank's return memo as Ex.P2, statutory notice as Ex.P3 and notice which was returned from the petitioner as Ex.P4. On the side of the defence, the petitioner has examined himself as D.W.1 and no documentary evidence was marked.

4. On reading of the entire material placed before this Court, it is seen that the revision petitioner has not disputed the signature found in the cheque and not denied the execution of the cheque. Both the Courts below have drawn the statutory presumption under Section 139 of Negotiable Instruments Act and found the revision petitioner guilty for the offence under Section 138 of NI Act and convicted him. The Appellate Court has also confirmed the conviction passed by the trial Court.

5 This Criminal Revision Case is pending for more than seven years. Despite giving several opportunities, taking advantage of suspension of sentence granted by this Court, the revision petitioner is not cooperating with the Court for disposing the matter. Therefore, this Court is inclined to dispose of the matter on merits.

6 On carefully going through the records, this Court finds that the initial burden has been proved by the respondent/complainant. Once the initial burden is proved by the respondent, it is for the revision petitioner/accused to rebut the presumption under Section 139 of NI Act.

7 On a reading of the entire materials placed before

this Court, this Court does not find any perversity with the judgment of the Appellate Court and the revision petitioner has not rebutted the presumption. Once the signature is not disputed, the respondent has to rebut the presumption that the cheque was not issued for legally enforceable debt. Even though the revision petitioner was examined as R.W.1, he has not denied the execution of the cheque and the signature found in the cheque.

8 This Court finds that the revision petitioner has not rebutted the presumption in the manner known to law and there is no perversity in the judgment passed by both the Courts below. The Appellate Court is a final Court of fact finding, re-appreciated the entire evidence and found that the revision petitioner has committed the offence under Section 138 of NI Act. This Court, being a revisionary Court, while exercising the revisionary jurisdiction, this Court has to see only as to whether there is any perversity in appreciating the evidence of the Courts below. On a reading of the entire materials, it is seen that the revision petitioner has admitted the execution of the cheque and he has not denied the signature found in the cheque. Therefore, as per the provisions under Sections 118 and 139 of the N.I. Act, the statutory presumption is that once he has admitted the execution of the cheque, it is the burden of the accused to rebut the statutory presumption in the manner known to law. It is very clear that there was no substance on record to rebut the presumption.

9 On a reading of the entire materials, this Court does not find any perversity in the judgment passed by both the Courts below. Under these circumstances, there is no merit in the revision and this Court does not find any valid ground to take a different view.

10 In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (JJ Act)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge,
Fast Track Court, Namakkal.

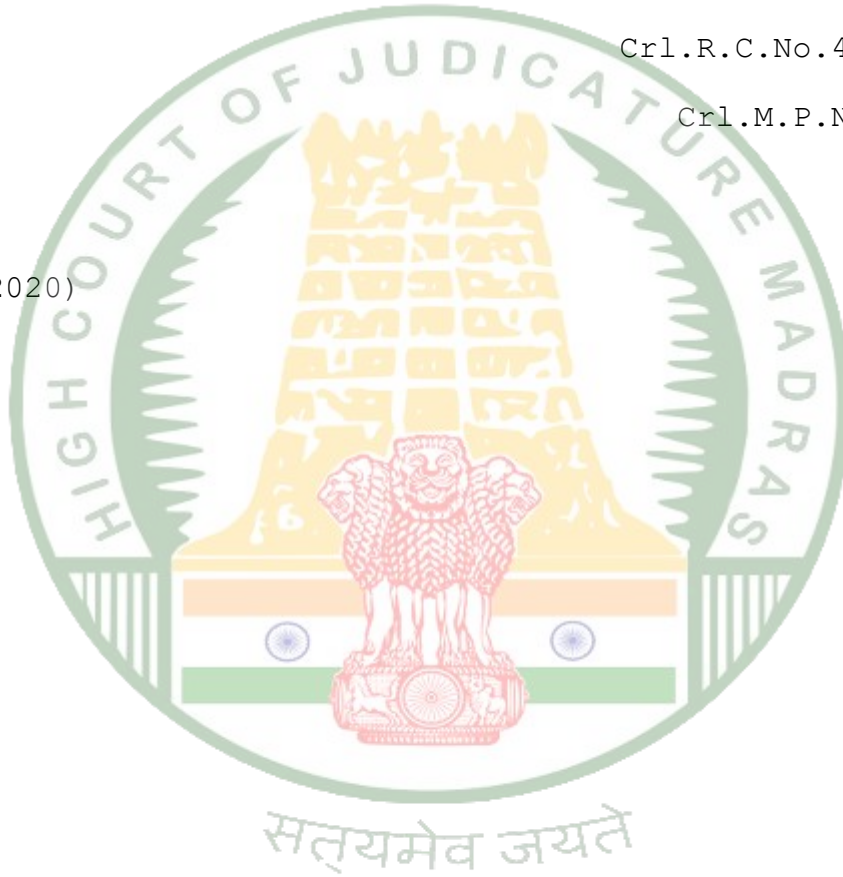
2. The Judicial Magistrate-I, Namakkal.

3. The chief Judicial Magistrate,
Namakkal.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No. 63785

Cr1.R.C.No.483 of 2012
and
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PVS (CO)
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