

BAIL SLIP

The Appellant/Accused namely M.Ponnusamy,  
S/o.Marappagounder was released on bail dated 24/05/2012 in MP.1  
of 2012 in CrI.RC.No.527/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.RC.No.527 of 2012

M.Ponnusamy ..... Petitioner/Appellant/Accused

vs

T.A.Shanmugam .....Respondent/Respondent/Complainant

Prayer Criminal Revision filed under Section 397 r/w 401 of  
Code of Criminal Procedure, to set aside the judgment dated  
28.04.2012 made in C.A.No.30 of 2011 on the file of the  
Principal Sessions Court, Erode confirming the conviction and  
sentence imposed in the judgment dated 19.01.2011 made in  
C.C.No.498 of 2008 on the file of the Judicial Magistrate,  
No.II, Erode.

For Petitioner : Mr.N.Manokaran  
For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Revision case has been filed to set aside the  
judgment dated 28.04.2012 made in C.A.No.30 of 2011 on the file  
of the Principal Sessions Court, Erode confirming the conviction  
and sentence imposed in the judgment dated 19.01.2011 made in  
C.C.No.498 of 2008 on the file of the Judicial Magistrate,  
No.II, Erode.

2 The respondent is the complainant and the petitioner  
is the petitioner. The respondent filed a private complaint  
against the petitioner herein under Section 200 Cr.P.C., for the  
offence under Section 138 r/w 142 of Negotiable Instruments Act,  
before the learned Judicial Magistrate NoII, Erode. The learned  
Judicial Magistrate No-II, Erode, taken the complaint on file in  
C.C.No.498 of 2008 and after trial the learned Judicial  
Magistrate found that the revision petitioner had committed an

offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo Simple Imprisonment for a period of six months for the offence under Section 138 r/w 142 of Negotiable Instruments Act and to pay a compensation of Rs.12,00,000/- to the complainant, which is equivalent to the cheque amount failing which, the complainant is at liberty to recover the above amount by filing appropriate petition before this Court.

3 Challenging the said judgment of the learned Magistrate, the revision petitioner herein filed an appeal before learned Principal District and Sessions Judge, Erode, in CrI.A.No. 30 of 2011. The learned Principal District and Sessions Judge, Erode after hearing the arguments, re-appreciated the evidence and dismissed the appeal and confirmed the conviction and sentence passed by the learned Magistrate. As against the said judgment of the learned Principal District and Sessions Judge, the convict has preferred the present revision case before this Court.

4 The learned counsel for the petitioner would submit that after receipt of the statutory notice from the respondent, he sent a reply in which he has clearly denied the transaction and also submitted that he lost the cheque and also filed the complaint before the Jurisdictional Police Station. On the date of issuance of alleged cheque, he was not in the place of the occurrence where the alleged cheque stated to have been executed and gone to Kannanoor, the state of Kerala for the purpose of his business. Further, he would submit that he questioned about the means of the respondent and both the Courts below have disbelieved the defence taken by the revision petitioner and observed that to prove his plea, neither he examined any witness nor produced any documentary evidence he had not proved the fact that he lost the cheque in the manner known to law. Even in the original complaint, though the respondent has stated that his father sold the property, out of the sale consideration, he provided a sum of Rs.12,00,000/- to him, the said fact has not been proved. In order to support his contention the learned counsel placed reliance on the following decisions of the Honourable Supreme Court

1. John K.Abraham Vs. Simon C.Abraham and another (2014) 2 SCC 236
2. K.Subramani Vs. K.Damodara Naidu (2015) 1 SCC 99

Both the Courts below have failed to consider these aspects and convicted the revision petitioner, which warrants interference.

5 Per contra, the learned counsel appearing for the respondent/complainant would submit that the revision petitioner borrowed a sum of Rs.12,00,000/- from the respondent and to repay the same, he issued a cheque, the respondent has presented the cheque for collection and the same was returned for the

reason "stopped payment" therefore he issued a statutory notice. After receiving the statutory notice, the petitioner also sent a reply, but he did not repay the said amount. The revision petitioner has not established his defence. Both the Courts have disbelieved the defence taken by the petitioner. The revision petitioner has not proved his defence in the manner known to law, further he has not denied the execution of the cheque and he has not denied the signature of the cheque and therefore, once he admitted the signature found in the cheque, it is the duty of the petitioner to prove the fact that he has not issued the cheque to discharge the legally enforceable debt. It is for the petitioner has to rebut the presumption that the cheque was not issued to discharge the legally enforceable debt or liability. The respondent has specifically stated that even in the cross examination done by the revision petitioner that his father sold the property out of the sale consideration he got the sum of Rs.12,00,000/- he kept that Rs.12,00,000/- in his house. Since the revision petitioner is known to him, he gave that money to the revision petitioner and the revision petitioner issued a cheque on the same day. Both the courts below have rightly held that once issuance of cheque and signature is admitted, it is for the revision petitioner/petitioner to explain as to how the cheque has gone to the hands of the respondent/complainant. Therefore, both the Courts held that the revision petitioner proved his initial burden and it is for the revision petitioner to rebut the presumption. But in this case, he has not rebutted the presumption in the manner known to law. In order to support his contention he placed reliance of the following decisions of the Hon'ble Supreme Court :

1. Rangappa Vs. Sri Mohan (2010) 11 SCC 441
2. N.Beena Vs. Muniyappan and another (2001) 8 SCC 458.

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

7 In this case, the respondent/P.W.1 is well known to the petitioner. On 25.05.2008 the petitioner borrowed a sum of Rs.12,00,000/- from P.W.1 to meet out his urgent family and business expenses. In order to discharge the said debt, the petitioner/D.W.1 has issued the cheque/Ex.P.1 which is drawn on the Karur Vysia Bank Ltd., Thudupathi bearing No.075919 dated 29.06.2008 for a sum of Rs.12,00,000/- assuring payment on presentation. Accordingly the respondent P.W.1 presented the cheque/Ex.P1 for collection through Indian Overseas Bank, Surampatti branch for collection. But the said cheque was dishonoured on 12.08.2008 with an endorsement insufficiency of funds. The return memo is Ex.P2. Thereafter, the respondent has

issued a statutory notice to the petitioner on 22.08.2008 under Ex.P3 which was received by the petitioner under Ex.P5 acknowledgment card. Even after receipt of the said notice, the petitioner has not paid any amount and instead, he has sent a reply on 01.09.2008 under Ex.P6. Therefore, the respondent was constrained to file private complaint before the Jurisdictional Magistrate, for the offence under Section 138 of the Negotiable Instruments Act. The learned Magistrate, after taking cognizance of the complaint in C.C.No.498 of 2008 and during the pendency of the complaint in order to prove the case of the respondent, the respondent himself was examined as P.W.1 and has filed proof affidavit for chief examination. During the course of cross examination the respondent has stated that more than 7 to 8 years he was doing textile business in that way alone he knows about the revision petitioner and he knows more than 10 years and the revision petitioner used to approach the respondent for cotton pieces. But, this facts has not been challenged by the revision petitioner.

8 On reading of the reply to the statutory notice and also the evidence of D.W.1. It reveals that the revision petitioner has taken a stand that on the date of issuance of the alleged cheque, at the place where it was alleged to have been issue, he had been to Kannanoor, the State of Kerala and he visited there for the purpose of business.

9 As discussed by both the Courts below, the petitioner has not examined any of his clients to prove that he went to Kannanoor, the State of Kerala on the day of issuance of alleged cheque. Therefore, both the Courts below have disbelieved the defence taken by the revision petitioner that he had been to Kannanoor, the State of Kerala not in the place where alleged to have issued the cheque.

10 The next contention of the revision petitioner is that he lost his cheque, somehow the respondent got the cheque and filed this case and with regard to the loss of the cheque, he already preferred the complaint before the jurisdictional police station.

11 On a careful consideration of the defence taken by the revision petitioner and also the evidence of D.W.2, both the Courts below have find that the said defence has not been established in the manner known to law. Even they have not filed copy of the original complaint lodged before the police station. Since both the Courts have given the reason for rejecting the said defence, as a revisional Court, this court does not find any perversity in the reason given by both the Courts below. The next defence taken by the revision petitioner is that the respondent/complainant has no means to lend such a huge amount of Rs.12,00,000/- and he has not drawn the said amount on the date of lending, he had no such huge money either in his bank

account or he had the proof to show that he was in a possessed of huge money on hand.

12 Further, he would submit that though the respondent during the examination has stated that his father sold the property and out of the sale proceeds he gave that money, which was kept by him in his house. When the revision petitioner requested him, he lent such a huge money. But he has not produced any proof viz., documents of sale deed executed or any other documents on the date of the alleged borrowal.

13 But in this regard, on reading of the entire evidence of P.W.1 and in the proof affidavit the respondent has not stated anything about the source of huge money. But, during the course of cross examination he has clearly stated that he is doing textile business and he knows the revision petitioner more than 10 years. The revision petitioner has also business transaction with him and he purchased the cottons from him.

14 In this case, the respondent has clearly stated that the money was kept with him in his house therefore one cannot establish with documentary evidences, that the money was kept in his house. Since because the respondent has not produced copy of the sale deed the case of the respondent can not be disbelieved. The decisions cited by the learned counsel for the petitioner is not helpful to the present case to decide the issue on hand.

15 On reading of the judgment of the lower appellate Court, the lower appellate Court is a final Court of fact finding it re-appreciated the entire evidence independently and gave a reason for rejecting the defence taken by the revision petitioner and accepted the case of the respondent.

16 It is well settled proposition of law that 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 appreciation of evidence while deciding the case by the Courts below.

17 On careful reading of Judgments of both the Courts below, this Court finds that there is no perversity and there is no merit in this revision case. Accordingly, the present Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Principal District and Sessions Court,  
Erode.

2.The Judicial Magistrate Court No.II,  
Erode.

3.The Chief Judicial Magistrate,  
Erode.

4.The Public Prosecutor,  
High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 67828  
+1cc to Mr.M.Guruprasad, Advocate, S.R.No. 68572

Crl.RC.No.527 of 2012

PVS (CO)  
GN(04/02/2020)



WEB COPY