

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.879 of 2012

Sureshkumar ...Petitioner /Complainant
Vs

1.Raghavan ...1st Respondent/Accused

2.State rep. by
Public Prosecutor,
Pondicherry. ...2nd Respondent

PRAYER: Criminal Revision Case filed under Article 397 r/w 401 of Criminal Procedure Code to set aside the orders dated 30.04.2012 passed in Criminal Appeal No.27 of 2011 on the file of the II Additional Sessions Court, Pondicherry reversing the order dated 02.03.2011 passed in C.C.No.200 of 2008 before the II Additional District Munsif's Court, Puducherry.

For Petitioner : Ms.R.Meenal

For Respondents: Mr.T.M.Naveen for R1

Mr.V.Balamurugan

Additional Public Prosecutor
(Pondicherry) for R2

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 30.04.2012 passed in Criminal Appeal No.27 of 2011 on the file of the II Additional District and Sessions Court, Puducherry, reversing the order dated 02.03.2011 passed in C.C.No.200 of 2008 before the II Additional District Munsif Court, Puducherry.

2. The petitioner is the complainant and first respondent is the accused. The petitioner filed a private complaint under Section 200 of Cr.P.C. against the first respondent herein for the offence under Section 138 of Negotiable Instruments Act, before the learned II Additional District Munsif Court, Puducherry, which was taken on file in C.C.No.200 of 2008. The learned II Additional District Munsif Judge, after trial, found that the first respondent guilty for the offence under Section

138 of NI Act and by judgment dated 02.03.2011, convicted the first respondent for the said offence under Section 255(2) of Cr.P.C and imposed a fine of Rs.8,00,000/- and in default of payment of fine, the accused is ordered to undergo three month of simple imprisonment. If the fine is paid, it is ordered to pay a sum of Rs.7,00,000/- as compensation to the petitioner. Challenging the said order, the first respondent preferred an appeal before the learned Chief Judge, Pondichery, which was taken on file in Crl.A.No.27 of 2011 and made over to the II Additional Sessions Judge, Pondichery. The learned II Additional Sessions Court, Pondichery, after hearing both parties found that the first respondent not guilty for the offence under Section 138 of NI Act and set aside the judgment of the learned II Additional District Munsif, Pondicherry. Aggrieved against the same, the petitioner has filed the present Revision petition before this Court.

3.The learned counsel appearing for the petitioner would submit that on 01.01.2006, the first respondent borrowed a sum of Rs.4,00,000/- (Rupees four Lakhs only) from the complainant for his business purpose with a condition to repay the borrowed amount within six months with an interest of 12% per annum and for which the first respondent had issued a cheque on 01.06.2006 for Rs.4,00,000/-. When the cheque was presented for collection on 02.06.2006 the same was returned for the reason "Account Closed" on the very same day. Thereafter, the petitioner issued statutory notice dated 08.06.2006 to the first respondent for calling upon the him to pay the cheque amount together with an interest of 12% per annum, within 15 days from the date of the lawyer notice. The first respondent has also received the said notice on 09.06.2006, neither repaid the amount or nor given any reply to the said notice. The trial Court after considering the submissions, perused all the materials and records and thereafter, hearing the arguments on either side had rightly come to the conclusion that the respondent is found guilty for the offence under Section 138 of Negotiable Instrument Act. Accordingly to the learned counsel for the revision petitioner the Appellate Court has failed to consider the statutory provisions of NI Act and for the offence under Section 138 of NI Act. So, the petitioner/defacto complainant prayed before the Court, to allow the revision case.

4. The learned counsel appearing for the respondent would submit that there is nothing on record to show that the respondent has borrowed a sum of Rs.4,00,000/- and agreed to repay the same along with interest 12% and also the cheque was issued in the year 2002 and the same was misused by the petitioner in the year 2006 and filed a false complaint. He further submitted that according to the petitioner, the cheque was issued on 01.01.2006, at that time, the respondent had

admitted his wife in hospital on 12.12.2005 and he was attending his wife as a by-Stander throughout the period of treatment and his wife was discharged from the hospital on 02.01.2006. Hence, he prayed before this Court to dismiss the case.

5. Heard the learned counsel on either side and perusal of the materials available on records.

6. The case of the petitioner is that on 01.01.2006, the first respondent has borrowed a sum of Rs.4,00,000/- (Rupees four Lakhs only) from the petitioner for his business purpose with a condition to repay the borrowed amount within six months with an interest of 12% per annum and for which the first respondent had issued a cheque on 01.06.2006 for Rs.4,00,000/-. When cheque was presented for collection on 02.06.2006, the same was dishonored and returned for the reason "Account Closed" on the very same day. Thereafter, the petitioner issued statutory notice dated 08.06.2006 to the first respondent calling upon him to pay the cheque amount together with an interest of 12% per annum, within 15 days from the date of the receipt of the notice. The first respondent has also received the said notice on 09.06.2006, but neither he repaid the amount nor given any reply to the said notice. Therefore, he filed a private complaint before the learned II Additional District Munsif, Pondichery, under Section 138 of Negotiable Instruments Act. Though the first respondent has taken the defense that there was a business transaction between the petitioner and the first respondent in the year 2002 and he borrowed a sum of Rs.50,000/- and the said amount was repaid. Even after receiving the amount, the petitioner did not return the discharged cheque, inspite of the repeated demands made by the first respondent and that the same is misused by the petitioner to file the present complaint which is not supported by any consideration. But as on date no notice was issued by the respondent, demanding the petitioner to return back the blank cheque or pronote but stated that he was taking care of his wife's treatment, who was admitted as inpatient at Kotakal Vaidiyasala, Kerala on 12.12.2005 to 02.01.2006.

7. On reading of the entire evidence it is seen that though the respondent taken the defense, has not produced any document evidence to substantiate the said defence. Therefore under these circumstances, the trial Court has rightly drawn the statutory presumption that the cheque was issued for legally enforceable debt and respondent has not rebutted the presumption in the manner known to law.

8. Therefore, under these circumstances, it is the statutory presumption that, the cheque is issued only for discharging the legally enforceable debt or liability. Therefore, the Appellate

Court, as a fact finding Court has failed to appreciate the entire evidence independently and draw the statutory presumption under Sections 118 & 139 of Negotiable Instrument Act. Once the signature and execution of the cheque is admitted the initial burden is proved by the complainant it is for the accused to rebut the presumption. In this case the respondent has admitted the transaction and admitted the execution of the cheque his only contention is the cheque was issued only in the year 2002 not in the year of 2006. Further he borrowed only 50,000/- and the same was repaid. Admittedly he has not taken any steps to get back the said cheque after repaying the said amount. Even he has not sent any legal notice or lodge any complaint before the petitioner. Hence, the respondent has not rebutted the statutory presumption in the manner known to law, mere bald denial is not sufficient to rebut the presumption and the same has to be done in the manner known to law.

9. It is settled proposition that the accused need not rebut the presumption by direct evidence. But, he can very well rebut the presumption either on preponderance of probability or probable defence even otherwise through cross examination of the witnesses. On a perusal of the earlier material this court finds that the respondent has not rebutted the statutory presumption in the manner known to law. The Trial Court rightly found the respondent guilty. The appellate Court failed to appreciate the entire evidence and therefore this Court finds that there is perversity in appreciating evidence of the appellate Court. Hence, the judgment of appellate Court is liable to be set aside.

10. Accordingly this Criminal Revision Case is allowed. The Trial Court is directed to secure the respondent to undergo remaining period of sentence if any.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The II Additional Sessions Judge, Pondicherry

2. The II Additional District Munsif, Pondicherry

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3. The Public Prosecutor,
High Court of Madras.

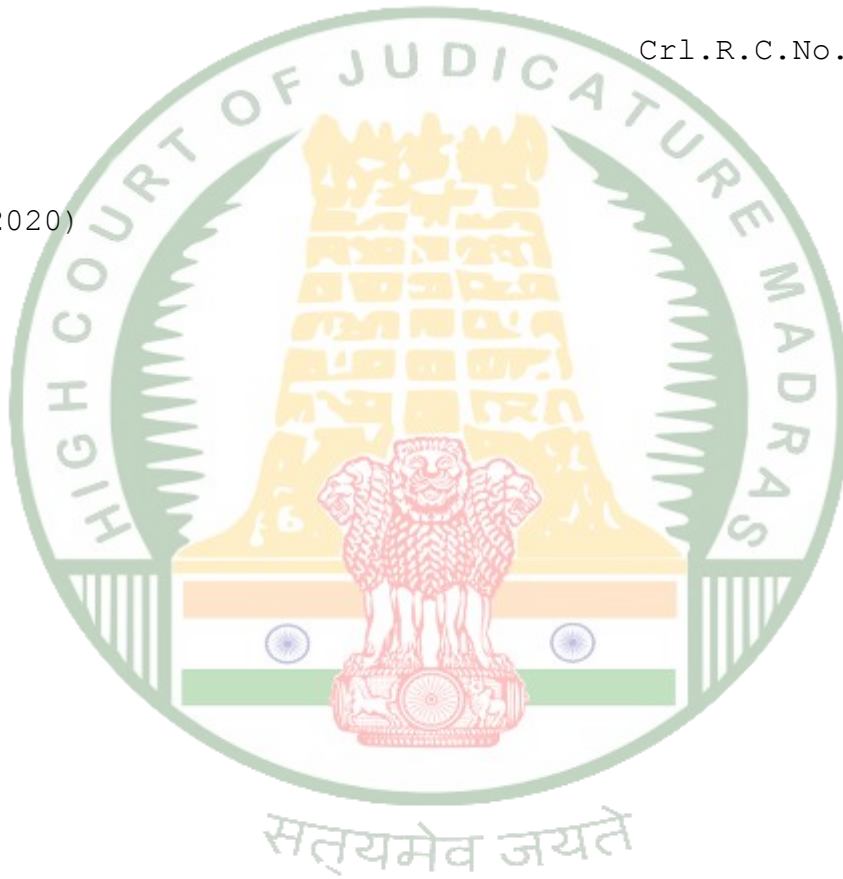
4.The Section officer
Criminal Section(Records)
High Court, Madras 104.

+1 CC to Mr.T.M.Naveen, Advocate sr 55368.

+1 CC to The Public Prosecutor(Pondicherry) sr 55233.

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KK(CO)
SP(31/01/2020)



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