

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.886 of 2012

Navaneethakrishnan

...Petitioner/Accused

-Vs-

Thirunavukkarasu

...Respondent/Complainant

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. praying to set aside the judgment of conviction dated 30.03.2012 made in C.A.No.29 of 2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Salem, confirming the judgment of conviction dated 09.03.2011 made in C.C.No.128 of 2006 on the file of the learned Judicial Magistrate No.III, Salem, and acquit the petitioner by allowing this revision.

For Petitioner : Mr.Lakshmanasamy

For Respondent : Mr.B.Vasudevan

\*\*\*\*\*

O R D E R

The revision petitioner is accused and respondent is complainant. The respondent preferred a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (for brevity 'NI Act') before the learned Judicial Magistrate III, Salem. The learned Magistrate has taken cognizance of the complaint and after completing procedural formalities and full fledged enquiry, convicted the revision petitioner/accused for the offence under Section 138 of NI Act and sentenced him to undergo simple imprisonment for a period of one month and to pay compensation of Rs.40,000/- to the respondent/complainant. Challenging the judgment of conviction, the accused has filed an appeal in C.A.No.29 of 2011. The learned Additional District & Sessions Judge, (Fast Track Court No.I, Salem), after hearing both the parties, found that there is no ground to interfere with the judgment of conviction made by the trial Court and hence by judgment dated 30.03.2012 dismissed the appeal and confirmed the conviction made by the trial Court. Aggrieved against the concurrent judgment of conviction, the accused is before

this Court with the present criminal revision case.

2 Even though, the revision is pending for more than seven years, both the learned counsel have not come forward to dispose of the case on merit, even after giving sufficient opportunities and hence this Court is inclined to dispose of the revision and perused the entire records.

3 It is seen that the learned Magistrate, after trial, found that the subject cheques were issued by the accused and the complainant has proved his initial burden and drawn statutory presumption and it is for the accused to rebut the same and accordingly convicted the petitioner/accused and the lower appellate Court has also confirmed the same.

4 It is the case of the complainant that the petitioner/accused borrowed a sum of Rs.25,000/- from the respondent/complainant on 03.09.2004. The petitioner had not repaid the amount, despite several demands and finally issued five cheques Ex.P1 to Ex.P5 each for Rs.5,000/- drawn at Canara Bank in favour of the respondent/complainant and the respondent presented the same for collection and got bounced and marked the return memo issued by the Bank as Ex.P6 to Ex.P10. Therefore, the respondent sent a legal notice to the petitioner/accused which was marked as Ex.P11. The petitioner/accused, after receipt of the statutory notice, has sent a reply with allegations against the respondent. Therefore, the petitioner filed private complaint for the offence under Section 138 of NI Act. It is seen that the main defence of the petitioner/accused is that the cheques were issued to one Shanthakumar and the said person has set up this respondent and filed false complaint against the petitioner and the petitioner in fact has caused legal notice to the said Santhakumar on 18.08.2004 and filed criminal complaint against him before the Surmanagalam Police Station. But, the petitioner/accused did not produce any document to prove his defence. The respondent/complainant was examined as P.W.1 and disputed cheques have been marked as Exs.P1 to P5 and the respondent/complainant proved that the cheques were issued only by the petitioner/accused and also presented the same for collection and got bounced. The petitioner/accused, even after receiving the statutory notice, did not repay the amount. The revision petitioner/accused has failed to prove his defence as pleaded in the reply notice. Once execution of cheque and signature found on the same is admitted then presumption under Section 118 and 139 would come into play and it is for the accused to rebut the same in the manner known to

law. The main defence taken by the petitioner is that the subject cheques were issued to Santhakumar and he set up this respondent to file false case against the petitioner and the petitioner has also caused legal notice to the Santhakumar and filed a criminal complaint against him. The petitioner/accused, even though, has examined two witnesses and marked two documents to prove his defence, if really the petitioner has caused legal notice to the Santhakumar and filed criminal complaint against him, he should have produced the same before the Court, which would prove his defence. Mere balled denial would not suffice to rebut the presumption. Even though it is settled proposition of law that the accused need not let in direct evidence and produce strong proof to rebut the presumption, he can very well establish his defence through preponderance of probabilities or probable defence. In this case, when the revision petitioner/accused has taken a specific defence that the subject cheques were issued to one Santhakumar, it is for him to substantiate the same by producing reliable documents before the Court. In the absence of the same, this Court is of the view that the petitioner/accused has failed to establish his defence in the manner known to law. Under these circumstances, it is statutory presumption that once issuance of cheque and signature found on the same is admitted, it is for the accused to prove that the cheques were not issued towards legally enforceable debt. On reading of the entire materials, this Court finds that the revision petitioner has not rebutted the statutory presumption in the manner known to law. There is no perversity in the judgment of conviction recorded by the learned Magistrate and the learned Sessions Judge. There is no merit in the revision and there is no sound ground to interfere with the judgment of both the Courts below.

5 In the result, the criminal revision case is dismissed. Trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

cgi

To

1. The Additional District and Sessions Judge,  
Fast Track Court No.I, Salem.

2. Do thro the Principal Judge,Salem
3. The Judicial Magistrate No.III, Salem.
4. Do thro the Chief Judicial Magistrate,Salem

Cr1.R.C.No.886 of 2012

A.SK(07/08/2019)



WEB COPY