

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.Rc.No.1400 of 2013

and

Crl.M.P.No.1 of 2013

1. C.Baby
2. M/s.C.N. Enterprises,
Rep. By its Proprietrix C.Baby,
Plot No.131, 17th Main Road,
Anna Nagar, Chennai-40. ... Petitioners

Vs

N.Prakash Reddy ... Respondent

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, to set aside the judgment passed in C.A.No.186 of 2011 by the learned IV Additional Sessions Court, Chennai, dated 25.10.2013, confirming the judgment Passed in C.C.No.4081 of 1996 by the learned V Metropolitan Magistrate, Egmore, dated 19.05.2011.

For Petitioners : Mrs. C.Baby (Party in person)
Name printed in cause list -
No appearance

For Respondent : Mr.V.Suryanarayana Reddy

O R D E R

This Revision has been filed to set aside the judgment passed in C.A.No.186 of 2011 by the learned IV Additional Sessions Court, Chennai dated 25.10.2013 confirming the judgment Passed in C.C.No.4081 of 1996 by the learned V Metropolitan Magistrate, Egmore, dated 19.05.2011.

2. The petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint under Section 200 Cr.P.C. before the learned V Metropolitan Magistrate, Egmore, Chennai-8 in C.C.No.4081 of 1996 for offence under Section 138 read with section section 142 of Negotiable Instruments Act (hereinafter referred to as ''NI Act''). The

learned Magistrate has taken cognizance of the offence and sent a summon. After enquiry, the learned Magistrate allowed the case and found the accused guilty for the offence under Section 138 of the NI Act and convicted and sentenced the accused to undergo six months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo further period of three months simple imprisonment. Challenging the judgment passed by the learned Magistrate, Egmore, Chennai in C.C.No.4081 of 1996, dated 26.05.2011, the respondent/complainant filed an appeal before the learned IV Additional Sessions Judge, Chennai and the same was taken on file in C.A.No.186 of 2011. After hearing the arguments of both sides, the appellate Court dismissed the appeal and the judgment of conviction and sentence passed by the learned V Metropolitan Magistrate, Chennai in C.C.No.4081 of 1996 dated 26.05.2011 were confirmed. As against the judgment of the learned IV Additional Sessions Judge, Chennai, the petitioner/accused has preferred this revision before this Court.

3. Despite giving sufficient opportunities, none appeared on behalf of the revision petitioner/accused. On 02.11.2018, when the matter was taken up for hearing, the learned counsel for the petitioner has submitted that he has no instructions from the petitioner and he sought permission of this Court to withdraw his appearance and he has also made an endorsement to that effect. The Registry was directed to remove the name of the counsel for the petitioner on record and print the name of the petitioner in the cause list. Thereafter, the petitioner neither appeared in person nor entered appearance through her counsel. Therefore, this Court is inclined to pass orders on merits.

4. Heard the learned counsel for the respondent and perused the materials available on record.

5. The respondent had filed a private complaint against the petitioner for the offence under Section 138 of NI Act stating that in order to repay a sum of Rs.80,000/-, the revision petitioner gave a cheque dated 25.01.1996. The respondent deposited the cheque in Bank for encashment and the same was returned with an endorsement ''funds insufficient'' and the same was intimated by the bank to the respondent by way of a memo. Therefore, the respondent has issued a statutory notice to the petitioner and she has also received the notice on 01.03.1996. Even after expiry of the statutory notice period, she has not repaid the money and did not send any reply. Therefore, the respondent filed a complaint before the learned Metropolitan Magistrate, Egmore, Chennai. In order to prove the case of the respondent, he has examined two witnesses and marked eight documents and proved that the revision petitioner issued a

cheque for a legally enforceable debt. When the cheque was returned and it was informed to the revision petitioner by way of statutory notice, after receiving the said notice, she has not honoured the commitment and repaid the amount. Though the revision petitioner has taken a defence before the Magistrate that the cheque was not issued to discharge the legally enforceable debt and it was issued to some third party, and the same was misused by the third party through the respondent/complainant, both the Courts below have found that the revision petitioner has not rebutted the presumption in the manner known to law. The revision petitioner has not denied the signature found in the cheque. The respondent himself has appeared before the Court and has deposed regarding the issuance of cheque, that the cheque was dishonoured. Thereafter, the respondent sent a statutory notice. The initial burden was proved by the respondent. Therefore, the trial Court has drawn a statutory presumption as contemplated under Section 139 of the Negotiable Instruments Act and found that the revision petitioner has not rebutted the presumption under Section 139 of NI Act and therefore, found the revision petitioner guilty for the offence under Section 138 of NI Act.

6. The appellate Court, being the final Court of fact finding, re-appreciated the entire evidence and found the judgment of the Magistrate is in order and did not interfere with it and dismissed the appeal filed by the petitioner. When once the revision petitioner has not denied the signature found in the cheque as not that of his, the Court

can draw the presumption that the cheque was issued for a legally enforceable debt. It is for the petitioner to rebut the presumption that the cheque was issued to the complainant for discharging legally enforceable debt.

7. Both the Courts have rightly held that the revision petitioner has not rebutted the statutory presumption and found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act. The appellate Court is the final Court of fact finding, had re-appreciated the entire evidence. This Court, while exercising the revisionary jurisdiction, cannot exercise the power of appellate Court and re-appreciate the entire evidence. When there is no perverse finding in the appreciation of the evidence by the appellate Court, there is no merit in the revision. Hence, this Court does not find any illegality or infirmity in the judgment dated 25.10.2013 in C.A.No.186 of 2011 made by the lower appellate Court.

8. In the result, the criminal appeal is dismissed and judgment dated 25.10.2013 passed in C.A.No.186 of 2011 by the IV Additional Sessions Court, Chennai is hereby confirmed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional Sessions Judge, Chennai.

2. The V Metropolitan Magistrate, Egmore,
Chennai.

+lcc to Mr.V.Surya Narayana Reddy, Advocate SR.69691

Cr1.Rc.No.1400 of 2013
and
Cr1.M.P.No.1 of 2013

PA(CO)
CB(10/02/2020)



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