IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018

Pronounced on : 02.08.2019

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.22 of 2013

Mohanraj

...Petitioner/Appellant/Accused

Vs.

C.Jeyasingh

... Respondent/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 passed by the learned I Additional District and Sessions Judge, Coimbatore, in C.A.No.191 of 2012 dated 17.10.2012 confirming the judgment of the learned Judicial Magistrate - II, Pollachi dated 14.06.2012 made in S.T.C.No.1057 of 2010.

For Petitioner : Mr.A.S.Baalaji

For Respondent : Mr.M.N.Balakrishnan

ORDER

This criminal revision case has been filed seeking to set aside the concurrent judgment of conviction made by both the Courts below.

2 The petitioner is an accused and respondent is complainant. The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of Negotiable Instruments Act, stating that the petitioner borrowed a sum of Rs.3.40 lakhs o n 12.01.2010 and agreed to repay the same within a month with interest at 12% p.a. Accordingly, when the respondent/complainant demanded repayment of amount, the petitioner issued a cheque bearing No.210839 dated 16.05.2010 drawn at HDFC Bank in favour of the respondent/complainant. The respondent/complainant presented the

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cheque for collection and the same was returned as "Account Closed". Therefore, the respondent caused legal notice on 28.05.2010 and the same was received by the petitioner on 29.05.2010, but, the petitioner neither repaid the amount nor issued any reply for the said notice. The complaint was taken on file by the learned Judicial Magistrate II, Pollachi, in S.T.C.No.1057 of 2010. The learned Magistrate, after trial, found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment dated 14.06.2012, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for a further period of one month. Aggrieved against the same, the petitioner has preferred an appeal before the learned Principal Sessions Judge, Coimbatore. The learned Principal Sessions Judge, has taken the same on file in C.A.No.191 of 2012 and made over the same to the learned I Additional District and Sessions Judge, Coimbatore. The leaned I Additional District and Sessions Judge, after hearing the counsel on either side, by judgment dated 17.10.2012, dismissed the appeal and confirmed the conviction and sentence made by the trial Court, against which, present revision has been filed.

3 The learned counsel for the petitioner would submit that there was no liability on the part of the petitioner towards the respondent and the cheque was not issued towards discharge of any legally enforcible debt. The respondent misused the blank cheque issued towards security for the previous loan, which was fully settled by the respondent. But the respondent instead of returning the cheque, which was issued towards security, has misused the same for filing false case against the petitioner. The above defence was established through cross examination of respondent/complainant. The learned trial Judge has failed to consider the above facts and the lower appellate Court has also not appreciated the evidence rightly and convicted the petitioner. Further he would submit that, pending trial, the respondent came for compromise and only on that basis, the petitioner approached the trial Court not to proceed the case further, since the matter was likely to be settled, petitioner did not examine any witness. However, the respondent, who came for compromise, suddenly withdrew the same and hence the petitioner was put to great hardship. The trial Court failed to consider the fact that the revision petitioner has established his defence though cross examination of the respondent and the respondent has not proved that there is legal liability on the part of the petitioner and the entire cross examination proved the defence and also the respondent has no sufficient means to lend such a huge sum of money. There is no existing liability on the part of the petitioner and the cheques

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were not issued towards discharge of any legally enforcible debt and the petitioner has rebutted the presumption favouring the respondent/complainant under Section 118 and 139 of NI Act. Both the Courts below had failed to consider the above facts and convicted the petitioner, which warrants interference.

4 Per contra, learned counsel appearing for the respondent/complainant contended that the petitioner admitted issuance of cheque and also admitted that he borrowed money at earlier occasion, and stated that he issued the subject cheque towards security for the said loan and subsequently he settled the dues. Once the petitioner/accused admitted that there was money transaction and also admitted the issuance of cheque and signature found on the same, it is for him to rebut the presumption under Section 118 and 139 of NI Act, in the manner known to law. The defence taken by the petitioner/accused that he borrowed money at earlier occasion and repaid the same was not established by producing any piece of proof. When specific defence taken by the petitioner, he has to necessarily prove the same by producing reliable documents. Therefore, the defence taken by the petitioner is not acceptable. The trial Court below had rightly appreciated the evidence on record and convicted the petitioner, further the lower appellate Court also confirmed the same, which does not call for any interference of this Court.

5 Heard the learned counsel appearing on either side and perused the original records.

6 The petitioner filed this revision against the concurrent judgment of conviction made by both the Courts below. On reading of the evidence on records, it reveal that the petitioner/accused admitted his signature and execution of cheque. He also admitted that there was money transaction and issued the subject cheque towards security of the amount borrowed at an earlier occasion and subsequently repaid the amount. But, the respondent did not return the cheque and foisted false case against him. Therefore, on the date of presentation of cheque for collection, there was no legally enforcible debt exist. When the petitioner/accused admitted the money transaction and issuance of cheque and signature found on the same, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or through cross examining the witnesses. In this case, on reading

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of the entire materials placed on record, it reveal that the petitioner/accused has taken a specific stand that he borrowed money at an earlier occasion and issued the subject cheque towards security for the loan and subsequently repaid the same, but, he has not produced any proof for repayment of the said borrowal. Further, the petitioner has not taken any steps to get back the blank cheque said to have been issued towards security. When the petitioner has repaid the earlier dues according to him, either he should have taken steps to get back the cheque, which was issued towards security or filed a complaint before the appropriate forum. Therefore, the petitioner/accused, even though taken the plea of discharge, has failed to prove the same in the manner known to law. The trial Court, by rightly appreciating the evidence, convicted the petitioner. The lower appellate Court, being a final Court of fact finding, has independently re-appreciated entire evidence and come to the conclusion that the revision petitioner committed offence under Section 138 of NI Act and hence confirmed the conviction made by the trial Court. This Court, while exercising revisional jurisdiction, cannot re-appreciate entire evidence and interfere with the judgment of the Courts below, unless there is perversity in appreciating the evidence in deciding the case. In this regard, it is pertinent to refer the decision of the Honourable Apex Court in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

> "…. In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or property of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice..."

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7 This Court does not find any perversity in the orders of both the Courts below and there is no merit and substance in the revision case and hence the same is dismissed. Trial Court is directed to secure the custody of the petitioner to undergo remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge, Coimbatore.

2. The Judicial Magistrate - II, Pollachi.

3. The Chief Judicial Magistrate,
Coimbatore.

4. The Superintendent,
Central Prison,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate sr.66779
+1cc to Mr.A.S.Baalaji, Advocate sr.66399

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