

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.229 of 2013
and
Crl.M.P.No.1 of 2013

S.Vijayakumar

...Petitioner

-Vs-

S.Subramanian

...Respondent

This Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C. to set aside the order dated 20.11.2012 passed in C.A.No.240 of 2011 on the file of the learned III Additional District and Sessions Judge, Coimbatore, confirming the order passed in C.C.No.257 of 2011 on the file of the learned Judicial Magistrate No.VII, Coimbatore.

For Petitioner : Mr.G.B.Saravanabhavan

For Respondent : Notice not served

O R D E R

The revision petitioner is the accused and the respondent is the complainant. The respondent has filed a private complaint against the petitioner under Section 200 of Cr.P.C. for offence under Section 138 of Negotiable Instrument Act (hereinafter referred to as 'NI Act') before the learned Judicial Magistrate No.VII, Coimbatore and the same was taken on file in C.C.No.257 of 2011. After full-fledged trial, the Magistrate found the petitioner/accused guilty for offence under Section 138 of NI Act and convicted and sentenced him to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.

2. Challenging the said judgment of the learned Magistrate, the petitioner had filed appeal before the learned Principal District and Sessions Judge, Coimbatore in C.A.No.240 of 2011. In turn, the learned Principal District and Sessions Judge, made over the appeal to the learned III Additional District and Sessions Judge, Coimbatore for disposal. The learned III

Additional District and Sessions Judge, after hearing the arguments on both sides, dismissed the appeal and confirmed the order passed by the learned Judicial Magistrate No.VII, Coimbatore, in C.C.No.257 of 2011, dated 14.10.2011.

3. Challenging the said judgment dated 20.11.2012, in C.A.No.240 of 2011, passed by the learned III Additional District and Sessions Judge, Coimbatore, the petitioner has filed the present revision before this Court.

4. The learned Counsel for the petitioner would submit that the petitioner never borrowed money from the respondent/complainant as stated in the Ex.P1 and he never executed Exhibit P1 promissory note in favour of the P.W.1. Actually, the petitioner borrowed money from one Manokaran, in the year 2000 and during the year 2004, he borrowed a sum of Rs.1,00,000/- from one Manokaran, for which he issued a blank promissory note and blank cheques as security purpose. Subsequently, the petitioner repaid the same. Because of physical disability, the petitioner used to have his transactions through his driver one Siva @ Sivakumar. Taking advantage of the same, the said Siva had received the said cheque and promissory note executed by the petitioner from one Manokaran. Siva had misused the cheques and promissory notes against the petitioner. Both Courts have failed to consider all these aspects and convicted the petitioner, which warrants interference.

5. Heard the learned counsel for the petitioner/accused and perused the materials available on record. There is no representation on behalf of the respondent/complainant.

6. The case of the respondent/complainant is that the revision petitioner herein has borrowed a sum of Rs.1,00,000/- from the respondent on 05.06.2008. For which, the petitioner has executed a promissory note. Despite repeated demands, the accused has failed to repay the said amount and the accused issued a post dated cheque for Rs.1,00,000/- bearing cheque No.337814 drawn on UCO Bank, Coimbatore to discharge his liability. The respondent presented the said cheque on 14.10.2008 before the State Bank of India, Coimbatore for encashment and the same was returned as 'Funds Insufficient'. Therefore, the respondent sent statutory notice to the petitioner. The petitioner has received the notice and sent a reply on 21.11.2008 with false allegations. Therefore, the respondent/complainant was constrained to file a private complaint against the petitioner before the learned Judicial Magistrate-VII, Coimbatore in C.C.No.237 of 2009. Before the trial Court, in order to prove the case, the complainant examined himself as P.W.1 and marked 9 documents. On the side of

the defence, the petitioner has examined 4 witnesses and marked 9 documents.

7. The learned counsel for the petitioner submitted that the cheque was issued to one Manokaran and the said Manokaran handed over the cheque to the driver of the revision petitioner viz., Siva. The said Siva had misused the cheque. Both the Courts have held that the denial made by the petitioner is only bald and respondent/complainant has proved his case beyond reasonable doubt. The petitioner has not denied the signature found in the cheque. The petitioner took up a stand that the cheque was issued to one Manokaran. The said fact has not been established by the petitioner. The respondent produced the cheque before the trial Court, he examined himself as a witness. After trial, the Court has come to the conclusion that the initial burden has been proved by the respondent and the petitioner has not disputed the signature and not established that the cheque was not given to the complainant. Therefore, both the Courts found that the initial burden has been proved by the respondent/complainant and the cheque was issued to discharge a legally enforceable debt. Once the initial burden is proved by the respondent, it is for the revision petitioner/accused to rebut the said presumption under Section 139 of the NI Act that the cheque was not issued to the respondent and the same was issued to one Manokaran and the said Manokaran returned the cheque to the driver of the petitioner viz., Siva. The said Siva misused the said cheque and set up the present respondent/complainant and filed this complaint.

8. Admittedly, the revision petitioner has not taken any action against the driver, which shows that the defence made by the revision petitioner is absolutely bald. Though the accused need not rebut the presumption by letting direct evidence, but he can very well rebut the presumption by preponderance of possibility or probable defence even through cross examination of the witnesses.

9. On a careful reading of entire evidence, this Court does not find that the petitioner has rebutted the statutory presumption under Section 139 of NI Act and this Court does not find any perversity in the findings of the both the Courts. Since the lower appellate Court is the final Court of fact finding, and it has re-appreciated the entire evidence and found that the revision petitioner has committed the offence under Section 138 of NI Act, this Court does not find any reason to interfere with the judgments passed by both the Courts below and does not find any perversity in the judgments of conviction and sentence imposed on the petitioner. There is no merit in the revision.

10. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of sentence, if any.

rli

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

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

2.The Judicial Magistrate No.VII, Coimbatore.

+1cc to Mr.G.B.Saravanabhavan, Advocate, SR.No.71786

Cr1.R.C.No.229 of 2013
and
Cr1.M.P.No.1 of 2013

Kak(31/10/2019)



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