

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.RC.NO.253 OF 2019

AND

CRL.M.P.NOS.2729 TO 2731 OF 2019

V.Srimurugan

... Petitioner/
Accused

Vs

R.Mohan

... Respondent/
Complainant

The Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C, to set aside the order of conviction dated 25.01.2019 in C.A.No.29 of 2018 on the file of the learned Additional Sessions Judge, Namakkal reversing the order of acquittal dated 08.03.2018 made in S.T.C.No.158 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Thiruchengode.

For Petitioner : Mr.R.Shase

O R D E R

This Revision has been filed by the petitioner to set aside the order dated 25.01.2019 in C.A.No.29 of 2018 on the file of the learned Additional Sessions Judge, Namakkal reversing the order of acquittal dated 08.03.2018 made in S.T.C.No.158 of 2017 on the file of the learned Judicial Magistrate (Fast Track Court), Thiruchengode.

2. The petitioner is the accused and the respondent is the complainant. The case of the respondent/complainant is that the petitioner had borrowed a sum of Rs.9,00,000/- from the respondent/complainant and issued post dated cheque bearing No.000042 and promised to pay the interest at 18%. The respondent has deposited the cheque in Bank for encashment and the same was returned with an endorsement as ''funds insufficient'' and the same was intimated by bank by way of a memo. on 11.01.2017, the respondent has issued a statutory notice to the petitioner and the same was returned with an

endorsement as 'unclaimed'. Subsequently, the respondent filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate (Fast Track Court) Thiruchengode, for offence under Section 138 of Negotiable Instruments Act. The learned Magistrate has taken cognizance of complaint and sent a summon. After enquiry, the learned Magistrate found that the respondent/complainant has not proved his case and dismissed the complaint filed by him. Challenging the judgment passed by the learned Magistrate, Fast Track Court, Thiruchengode in S.T.C.No.158 of 2017, dated 08.03.2018, the respondent/complainant filed an appeal before the learned Principal Sessions Judge, Namakkal and the same was taken on file in C.A.No.29 of 2018 and after hearing arguments, the Additional Sessions Judge Namakkal, reversed the judgment and set aside the order of the learned Magistrate and convicted the petitioner/accused for offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo two years imprisonment and to pay a fine of Rs.9,00,000/- as compensation to the respondent/complainant. As against the judgment of the learned Additional Sessions Judge, the petitioner/accused has preferred this revision before this Court.

3. The learned counsel for the petitioner/accused would submit that the respondent/complainant has not proved the transaction. The petitioner has not produced the statement of accounts. The cheque was issued to one Murugan who is running finance business. Due to business dispute between the petitioner and the said Murugan, murugan has set up the complainant and filed a case against him. There is absolutely no evidence to prove the transaction between them. The Appellate Court has also failed to appreciate the facts and convicted the petitioner. Hence, the petitioner prays this Court to set aside the judgment of the learned Additional Judge, Namakkal in C.A.No.29 of 2018 dated 25.01.2019.

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

5. It is settled proposition of law that while deciding the revision, this Court has to see if there is any perversity in the order passed by the learned Appellate Judge. A perusal of the records, reveal that the petitioner/accused borrowed a sum of Rs.9,00,000/- from the respondent/complainant for his urgent business needs. Since the cheque given by the petitioner was returned as "funds insufficient", the respondent sent a legal notice to the petitioner. As there is no reply for the said notice from the petitioner, the respondent had filed a private complaint before the learned Magistrate and the learned Magistrate after elaborate trial, acquitted the petitioner, against which the respondent preferred an appeal. The lower

appellate Court after re-appreciating entire evidence, reversed the judgment of the trial Court by order dated 08.03.2018 and convicted the petitioner by judgment dated 25.01.2019.

6. The defence taken by the revision petitioner/accused is that there was no money transaction between them and he has not received any money from the respondent/complainant. The said cheque was issued to one Murugan and the said Murugan has handed over the cheque to the complainant, who in turn has filed a false complaint against him. Though the petitioner has not received the cheque, he has not proved that the address mentioned in the notice is not the correct address.

7. However, after receipt of the summons, the petitioner has not taken any steps to inspect the cheque, when the complainant is unknown person. When once he received the summons from the Court and if really the petitioner has no connection with the person, he should have inspected the cheque and see if he had indeed issued the cheque in question. While issuing the cheque to any person, businessmen used to mention the name of the person to whom the cheque was issued and verify the counter file. But, in this case, admittedly, the revision petitioner has not taken any steps to inspect the cheque soon after receiving summons from the Court. Further, he has not taken any action against the said Murugan since it is his case that the said cheque was misused by the said Murugan. On reading of the evidence of the complainant, it is seen that P.W.1 has clearly stated that the petitioner, even one month prior, had asked money from him. The revision petitioner/accused is in the habit of borrowing money on the lesser interest and lent the money for higher interest, for which he informed the petitioner one month before, Rs.10,00,000/- was available and thereafter, he informed Rs.9,00,000/- available. Immediately, he accepted to get the money for lower interest and issued post dated cheque.

8. One of the defence taken by the petitioner is that the signature found in the cheque is a forged one. However, the petitioner has not taken any steps to send the cheque to hand writing expert to examine the authenticity of the signature. His silence to do so only fortifies the case of the respondent that the petitioner has issued the cheque. Likewise, the petitioner has taken a defence that one Murugan was initially given the cheque and he had mis-used it. The petitioner has not examined the said Murugan to prove under what circumstances the cheque was issued. Therefore, the legal presumption is that once the signature is admitted there is a legal presumption under Section 118 and 139 of NI Act. The cheque is issued for discharging legally enforceable debt or liability. No doubt, the said presumption is rebuttable presumption. The petitioner has not rebutted the presumption in the manner known to law. The

Appellate Judge has also clearly drawn the legal presumption and the petitioner has not rebutted the presumption.

9. This Court is of the view that the petitioner failed to prove the fact that statutory notice has not been served on the petitioner and failed to prove that there is no legally enforceable debt. Hence this Court does not find any perversity or infirmity in the judgment dated 01.04.2014 made by the lower appellate Court.

10. In the result, the Criminal Revision case is dismissed and judgment dated 25.01.2019 made by the lower appellate Court is hereby confirmed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge, Namakkal
2. The Judicial Magistrate (Fast Track Court), Thiruchengode.

+lcc to Mr.M.Guruprasad, Advocate, S.R.No.15732

Crl.RC.No.253 of 2019
and

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VGII(CO)
CS/03/02/2020

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