

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.276 of 2019
and
Crl.M.P.Nos.3013 & 3014 of 2019

A.Chitra

...Petitioner/Accused

-Vs-

N.Bhuvaneshwari

...Respondent/Complainant

Prayer: This Criminal Revision Case is filed under Sections 397 read with Section 401 of Criminal Procedure Code, to allow the Criminal Revision Petition and set aside the order passed by the learned XVI Additional City Civil and Sessions Judge, Chennai in C.A.No.179 of 2018 dated 23.11.2018 by confirming the conviction and sentence imposed by the learned Metropolitan Magistrate, Fast Track -I Court, Allikulam, in C.C.No.1543 of 2013 order dated 14.03.2018.

For Petitioner: Mr.P.Shanmugavelayutham, SC
for Mr.D.Jaganathan

For Respondent: Mr.C.Sivanesan

O R D E R

This Criminal Revision Case has been filed to allow the Criminal Revision Case and set aside the order passed by the learned XVI Additional City Civil and Sessions Judge, Chennai in C.A.No.179 of 2018 dated 23.11.2018 by confirming the conviction and sentence imposed by the learned Metropolitan Magistrate, Fast Track -I Court, Allikulam, in C.C.No.1543 of 2013 order dated 14.03.2018.

2 The respondent is the complainant and the revision petitioner is the accused herein. The respondent/complainant filed a private complaint against the petitioner/accused under Section 200 of Criminal Procedure Code, before the Metropolitan Magistrate, Fast Track No-I Court, Egmore at Allikulam for the offence under Section 138 of Negotiable Instruments Act.

Thereafter, the learned Metropolitan Magistrate, Fast Track -I Court, Allikulam, taken the complaint on file, in C.C.No.1543 of 2013. After trial proceedings the learned Metropolitan Magistrate convicted the accused and sentenced him to undergo 9 months Simple Imprisonment and to pay the compensation of Rs.14,00,000/- (Rupees fourteen lakhs only) in default to undergo further period of three months. As against the said order the petitioner/accused filed an appeal before the learned XVI Additional Sessions Judge, Chennai, in C.A.No.179 of 2018. After hearing the appeal, the learned XVI Additional City Civil and Sessions Judge, Chennai dismissed the appeal. As against the Judgment of dismissal the petitioner/accused filed the present Criminal Revision Case before this Court.

3 The learned counsel for the petitioner submitted that the respondent/complainant has not proved the borrowal of the money in the year 2009. But, whereas in the complaint the respondent has not stated as on what date the petitioner borrowed the amount which is not clearly established. Further, the respondent in his complaint has stated that on the date of execution, 3 cheques were issued but there is no reference in Ex.P1 regarding issue of the cheques. Ex.P.1 stamp papers was produced by Jayabharatham Chit funds and they denied the signatures. Further, he would submit that the complainant/respondent and his brother were tenants with the revision petitioner. The said cheque was issued only for security purpose by the Jayabharatham Chit funds. After discharging the amount the respondent failed to return the cheque and misused the cheque, thus the complainant/respondent has not proved his case. The petitioner/accused has never received the alleged legal notice, which is also established before the lower Court, and there is no valid proof of service of legal notice. The trial Court ought to have appreciated that the respondent had never established that the alleged cheque was issued for discharging the legally enforceable debt or liability either wholly or partly by producing substantial document. Hence, the learned counsel prays to allow this Criminal Revision Case.

4 The learned counsel for the respondent would submit that the petitioner admitted the signature. Though, in the cross examination the petitioner denied but he did not send any reply to the statutory notice, further, he has not given any material to show that the cheque was issued only for the reason as stated by him. He further submitted that once the signature and execution of the cheque are admitted it is for the accused to rebut the presumption that the cheque was issued to discharge the legally enforceable debt or liabilities. The presumption

has not been rebutted by the petitioner/accused. Therefore, the learned Magistrate has rightly dismissed the petition and it does not warrants any interference.

5 Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the materials available on record.

6 It is seen that the accused had approached the complainant to meet medical expenses in the year 2009. The petitioner/accused had borrowed a sum of Rs.14,00,000/- . Thereafter, the accused has executed a letter of acknowledgment in Rs.20/- Non Judicial Stamp paper on 09.02.2012 and the petitioner/accused has also issued three cheques (i) bearing cheque No.823232 dated 20.07.2012 for a sum of Rs.5,00,000/- (ii) bearing cheque No.823236 dated 20.08.2012 for a sum of Rs.5,00,000/- (iii) bearing cheque No.823237 dated 20.09.2012 for a sum of Rs.4,00,000/- all were drawn at Indian Overseas Bank, Aminjikarai Branch, Chennai, in favour of the complainant/respondent. The cheque bearing cheque No.823232 dated 20.07.2014 was presented for collection on 20.07.2012 through the complainant at, Canara Bank, Triplicane, Chennai, the said cheque was returned as "funds insufficient" along with the bank return memo dated 24.07.2012. the other two cheques were also returned for the same reason. Thereafter, the complainant/respondent issued a statutory notice on 18.10.2012 the said notice was received by the petitioner/accused on 19.10.2012. After receipt of the said notice the petitioner has not paid the amount and also not sent any reply. Therefore, the complainant/respondent filed a private complaint under Section 200 of Cr.P.C., before the Metropolitan Magistrate Fast Track Court No-I, Allikulam, Chennai.

7 During the trial the complainant/respondent was examined herself as P.W.1, and on her side Ex.P1 to Ex.P9 were marked. Accused/petitioner was examined herself as D.W.1., and on her side Ex.D1 was marked.

8 After completing the oral and documentary evidence, the trial Court has come to the conclusion that the said cheques were issued to discharge the legally enforceable debt. The Court has drawn the statutory presumption and found that the petitioner/accused guilty for the offence under Section 138 of Negotiable Instruments Act and the appellate Court also dismissed the appeal and confirmed the judgment of the Magistrate. While exercising the revisional jurisdiction this Court has to see is there any perversity in findings given by the Courts below. The revision Court cannot exercise the power of the appellate Court and re appreciate the entire evidence and substituted its own reason for conviction or acquittal and

reversing the judgment of the Courts below. Since, both the Courts are fact finding Courts and also the appellate Court is a final Court of fact findings and re-appreciated the entire oral and documentary evidence found that the respondent/complainant has proved his initial burden and draw the statutory presumption under Section 138 and 139 of Negotiable Instruments Act, and the cheques were issued to discharge the legally enforceable debt, there is no doubt that the said statutory presumption is only a rebuttal presumption. Since the petitioner/accused has not denied the signature but she has not taken any steps to issue the reply on the receipt of the statutory notice, no doubt the accused need not rebut the presumption by let in direct evidence even it can be by way of preponderance of probabilities.

9 On reading of the entire evidence, the petitioner/accused has not filed any reply to the statutory notice to deny the liability that she issued cheques only for the security purpose for borrowal of the money from the Jayabaratham Benefit funds. After discharging the amount she has not returned those cheques but admittedly as stated by the appellate Court, she has not taken any steps to prove the same. It is a finance transaction there would be records to establish that the cheques were issued either only for repayment of the money for the security purpose. Further, she also submitted that there is an enmity between them. But absolutely there is no evidence to show that there was an enmity. The petitioner/accused stated that a false case was registered against her. Though, in one place the respondent denied the signature in the cheques she has not taken any step to get an experts opinion regarding the signature. Therefore under there circumstances, once the respondent/complainant proves that the petitioner/accused has executed the cheques and there is a legal presumption that the cheques issued only for discharging legally enforceable debt or liabilities. It is for the accused to rebut the presumption.

10 On reading of the entire evidence both the Courts below have rightly drawn the statutory presumption that the cheques were issued to discharge legally enforceable debt and petitioner/accused has not rebutted the presumption in the manner known to law.

11 Considering the facts and circumstances of the case, it is a well settled proposition that while exercising the revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence. However, this Court has to see as to whether there is any perversity in the appreciation of evidence while deciding the case by the appellate Court. In this case also both the Court rightly appreciated the entire evidence hence there is no

perversity is found in the findings. Further there is no merits in this revision case.

12 In this regard, it is pertinent to refer to 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 propriety 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..."

13 In the result, the Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sbn

To

1.The Metropolitan Magistrate,
Fast Track -I Court,
Allikulam.

2.-Do- Thro the Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The XVI Additional City Civil and Sessions Judge,
Chennai.

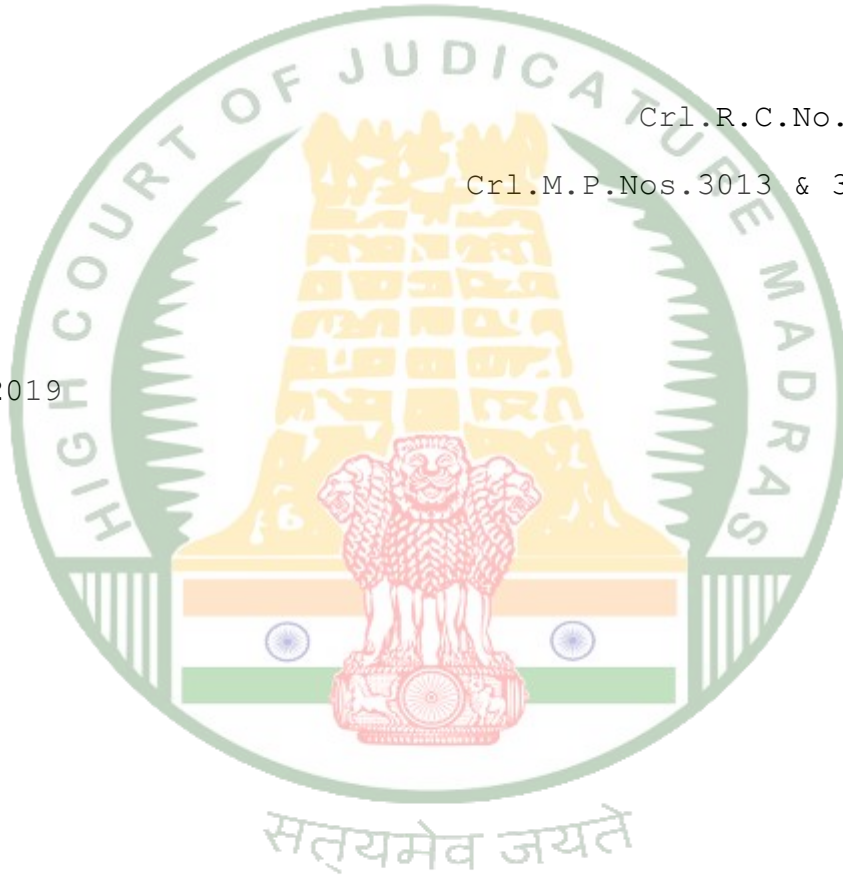
4.-do- Thro The Principal Sessions Judge,
Chennai.

+lcc to Mr.M.Baskaran, Advocate Sr.25073 [04/06/2019]

+lcc to Mr.D.Jaganathan, Advocate Sr.24981 [06/06/2019]

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