

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1055 of 2016  
and  
Crl.M.P.No.8961 of 2016

S.Jayakumar

...Petitioner

Vs.

C.K.Natarajan

...Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to set aside the conviction and sentence made in Criminal Appeal No. 108 of 2015, dated 01.08.2016, on the file of the I Additional District & Sessions Judge, Tirupur in confirming the Judgment made in C.C.No. 273 of 2013 dated 24.11.2015 on the file of the Judicial Magistrate - Fast Track Court, Tirupur.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondent : Mr.S.Udaya Kumar

O R D E R

This Criminal Revision is filed by the petitioner/accused to set aside the conviction and sentence made in Criminal Appeal No. 108 of 2015, dated 01.08.2016, on the file of the I Additional District & Sessions Judge, Tirupur in confirming the Judgment made in C.C.No. 273 of 2013 dated 24.11.2015 on the file of the Judicial Magistrate - Fast Track Court, Tirupur.

2. The case of the prosecution is that on 03.07.2011, the petitioner/accused borrowed a sum of Rs.5,00,000/- and executed promissory note agreeing to repay the principal with interest at the rate of 12% per annum. However, he neither paid principal nor interest. After several requests made by the respondent, the petitioner/accused issued a cheque bearing No. 455143, dated 15.03.2012, drawn from HDFC Bank for Rs.4,00,000/- to discharge the said debt. The respondent presented the cheque for collection, on 24.03.2012, before City Union Bank, Tirupur branch and it was returned on 26.03.2012 with an endorsement as 'account closed'. Whiles, the accused lodged a complaint before Rural Police Station against complainant. The complainant issued legal notice, dated 03.04.2012, to the

accused. The accused evaded the notice. Since, the complainant had sent the notice 'to last known address' it is deemed as constructive notice. Thereby, the complainant initiated legal proceedings under Section 138 of Negotiable Instruments Act, 1881.

3. Before the trial court, on the side of the complainant, PW1 was examined and Ex.P1 and Ex.P2 were marked. On the side of the accused, no oral or documentary evidence was produced. The learned Magistrate, after trial, found the petitioner/accused guilty under Section 138 of the Negotiable Instruments Act, 1881 and convicted him under Section 255(2) Cr.P.C. and sentenced him to undergo simple imprisonment for a period of one year for the offence under section 138 of the Negotiable Instruments Act, 1881 and imposed with a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of one month.

4. Challenging the said conviction and sentence, the petitioner/ accused had filed appeal in C.A.No.108 of 2015, before the learned I Additional District and Sessions Judge, Tirupur. The lower appellate Court, being fact finding Court, re-appreciated the entire evidence and dismissed the appeal by judgment dated 01.08.2016, and confirmed the conviction and sentence passed by the trial Court.

5. Aggrieved against the said judgment, dated 01.08.2016, made in C.A.No.108 of 2015, the accused has preferred this present Criminal Revision before this Court.

6. The learned counsel appearing for the revision petitioner would submit that the respondent has stated that the petitioner borrowed a sum of Rs.5,00,000/- and promised to pay 12% interest for the said amount and he has also executed Promissory Note in that respect. The petitioner/accused has issued a cheque bearing No. 455143, dated 15.03.2012, HDFC Bank, Tirupur branch. Therefore, the said cheque was not issued for the amount borrowed on the Promissory Note. Further, the learned counsel appearing for the petitioner/accused submitted that the statutory notice was not served to the petitioner/accused. When the cheque was dishonoured, the respondent should have served notice to the petitioner/accused, but he has not done so. The Courts below have failed to consider these facts. Therefore, the revision petition is liable to be allowed and the orders passed by the lower courts are liable to be set aside.

7. The learned counsel appearing for the respondent would submit that the notice was sent to the petitioner/accused, in the address given by him which is the 'last known address'.

But, the cover was returned as 'left'. Therefore, when the respondent has properly addressed the notice and sent it to the 'last known address', it is deemed to be considered as served. Mere non-receipt of the notice by the petitioner/accused is not a reason to set aside the order passed by the courts below. Further, the signature found in the cheque is not disputed by the petitioner/accused. The presumption under Section 139 of Negotiable Instrument Act, 1881 lies in favour of the respondent and the burden lies upon the petitioner/accused to rebut the presumption. However, in this case, the petitioner/accused has not filed any oral or documentary evidence to rebut the presumption. Therefore, there is no reason to interfere with the order passed by the courts below.

8. Heard the rival submissions on the either side and perused the materials available on records.

9. It is not in dispute that the petitioner/accused issued a cheque bearing No. 455143, dated 15.03.2012, drawn from HDFC Bank for Rs.4,00,000/- in favour of the respondent. The signature found in the cheque was also not in dispute. The only dispute is that the petitioner/accused has not issued the cheque for the amount mentioned in the Promissory Note and that there is variation in the amount mentioned in the Promissory Note and the cheque. Therefore, the petitioner/accused has failed to prove that the cheque was issued only to discharge the legally enforceable debt.

10. It could be seen that though the notice sent by the respondent to the petitioner/accused returned as 'left', there is no dispute with reference to the address mentioned in the notice. Therefore, once it is properly addressed, and returned for any reason, it can be taken as deemed service. Therefore, it is for the petitioner/accused to prove that the address found in the notice is not indeed his address or the notice was not properly addressed. But in this case, there is no such defence taken by the petitioner/accused. Even if, the petitioner/accused had changed the address, he should have informed the change of address. Admittedly, the respondent had sent the notice to the 'last known address' and therefore, it could be considered as a deemed service. Further, the signature found in the said cheque is also not in dispute. Therefore, once the signature is admitted and the execution is not denied, the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, 1881 comes into play and the same has not been rebutted by the petitioner/accused. No doubt presumption need not be rebutted by direct evidence and same can be done through preponderance of probabilities or probable defence, it can be even done through cross examination of the complainant/witness, the petitioner can establish his defence by way of preponderance of probabilities or probable defence.

Admittedly, the said legal presumption has not been rebutted in the manner known to law. Therefore, in these circumstances, this court does not find any merit in the revision.

11. 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 examine 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 an Appellate Court nor can it be treated even as a second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already been 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..."

12. In this case also, both the Courts below have given concurrent findings. Therefore, the jurisdiction of this Court is very limited. While, exercising the revisional jurisdiction, the court has to see only as to whether there is any perversity in appreciating the evidence in deciding the case. As already discussed above, this Court does not find any perversity in the appreciation of evidence. In these circumstances, this Court does not find any reason to interfere with the finding of the Courts below.

13. Accordingly, this Criminal Revision is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

mbi

To

- 1.The I Additional District & Sessions Judge,  
Tirupur.
- 2.The Judicial Magistrate - Fast Track Court,  
Tirupur.
3. -do-Through' The Chief Judicial Magistrate,  
Tirupur.

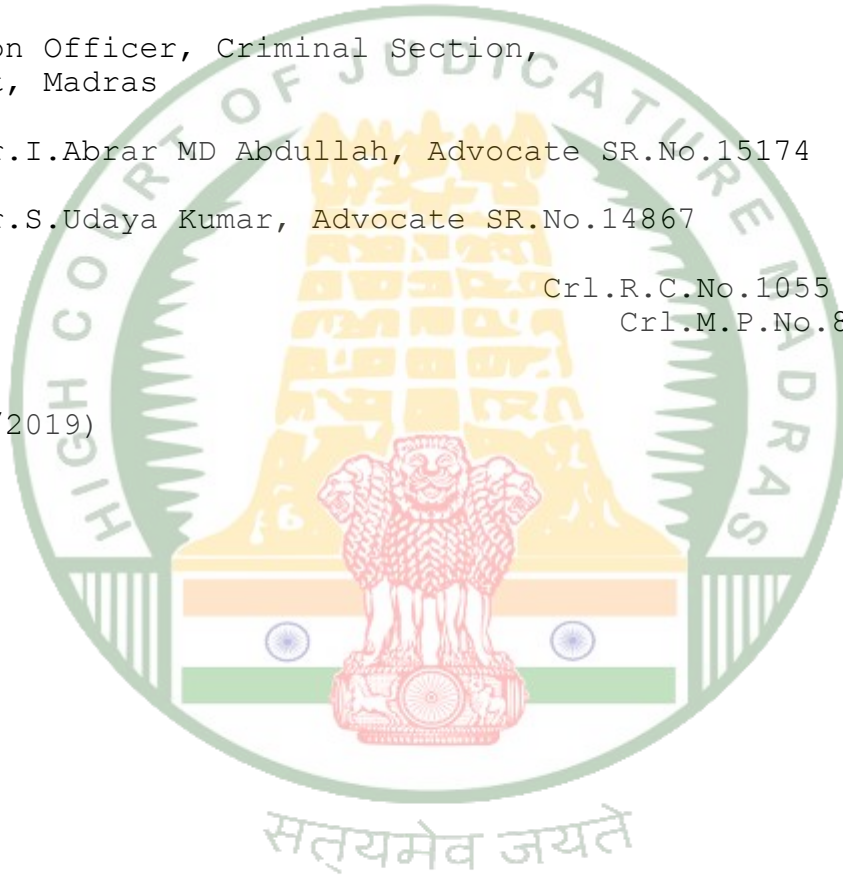
Copy To  
The Section Officer, Criminal Section,  
High Court, Madras

+lcc to Mr.I.Abrar MD Abdullah, Advocate SR.No.15174

+lcc to Mr.S.Udaya Kumar, Advocate SR.No.14867

Cr1.R.C.No.1055 of 2016 and  
Cr1.M.P.No.8961 of 2016

GJ II(CO)  
GMY(06/06/2019)



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