

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.605 of 2016
and
Crl.M.P.Nos.4199 and 4200 of 2016

S. Rani

...Petitioner

Vs.

R.R.Santhi Devi

...Respondent

Criminal Revision Case filed under Section 397 read with 401 of Code of Criminal Procedure, to set aside the order dated 05.03.2016 passed in C.A.No.5 of 2014 on the file of the learned Sessions Judge, Sessions Court-II, Kancheepuram modifying the sentence imposed in C.C.No.141 of 2013 on the file of the Judicial Magistrate No.II, Kancheepuram District dated 09.05.2014 from six months to three months and imposing a compensation of Rs.90,000/-

For Petitioner : Mr.V.V.Sairam

For Respondents : M/s.K.Parameswari

O R D E R

The Criminal Revision has been filed to set aside the order dated 05.03.2016 passed in C.A.No.5 of 2014 on the file of the learned Sessions Judge, Sessions Court-II, Kancheepuram.

2. The revision petitioner is the accused and the respondent is the complainant. The respondent has filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.II, Kancheepuram for offence under Section 138 of Negotiable Instruments Act. The learned Magistrate, after taking cognizance of the complaint and on enquiry, found the revision petitioner/accused guilty of offence under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default, to undergo two weeks simple imprisonment. Aggrieved against the judgment of the conviction and sentence passed by the learned Magistrate, the accused has filed an appeal in C.A.No.05 of 2014 before the learned II Sessions Judge, Kancheepuram.

3. After hearing both sides, the learned Sessions Judge partly allowed the appeal. The conviction and sentence passed by the learned Magistrate were modified by reducing the sentence of imprisonment from 6 months to 3 months. With regard to the fine amount, the judgment of the trial Court is set aside. The accused /appellant was ordered to pay the compensation of Rs.90,000/- to the respondent/complainant. Challenging the order of the learned Sessions Judge II, Kancheepuram, the petitioner/accused has filed a present revision before this Court.

4. The case of the respondent/complainant is that on 26.04.2010, the respondent has entered into an agreement with the petitioner for purchasing vacant plots situated in Kottivakkam Village. The sale consideration was fixed at Rs.1,50,000/- and she has paid a sum of Rs.75,000/- as advance. Further, the respondent has paid Rs.10,000/- cash in connection with the agreement, in the year 2010. Later the respondent approached the accused to return the advance amount. Therefore the revision petitioner has issued a post dated cheque for repayment of the advance of Rs.85,000/-.

5. As per the instructions given by the petitioner, the respondent has deposited the cheque in bank for encashment and the same was returned with an endorsement "'insufficient funds'". Hence, the respondent issued statutory notice to the petitioner on 06.06.2011. After receiving the notice, the petitioner has neither returned the money nor sent any reply. Therefore, the respondent has filed private complaint against the revision petitioner for offence under Section 138 of Negotiable Instrument Act before the learned Judicial Magistrate-II, Kancheepuram and the same was taken up on file in C.C.No.141 of 2013. In order to prove the case of the respondent before the learned Magistrate, the respondent herein examined herself as P.W.1 and produced Ex.P1 to Ex.P.6. After completing the evidence on the side of the respondent, no oral and documentary evidence was produced by the petitioner. The learned Magistrate found that the execution of the cheque was admitted and signature found in the cheque is also not in dispute. The main defense taken by the revision petitioner is that the cheque was issued only for security purpose. The learned Magistrate has drawn the statutory presumption under Section 118 and 139 of Negotiable Instrument Act and found the revision petitioner guilty and convicted him for the offence under Section 138 of NI Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default, to undergo two weeks simple imprisonment. Against the order of the learned Magistrate, the petitioner/accused has preferred an appeal before the learned Sessions Judge, Kancheepuram. The first

appellate Court being fact finding Court, re-appreciated the entire evidence placed before it and found that there is no merit in the appeal. The appeal was partly allowed and the conviction and sentence passed by the learned Magistrate were modified by reducing the sentence of imprisonment from 6 months to 3 months and to pay a fine of Rs.90,000/- as compensation. Hence the petitioner has filed the present revision case before this Court.

6. While exercising the power of revisional jurisdiction, this Court cannot exercise the power of Appellate Court and re-appreciate the entire evidence. This Court has to find out as to whether there is any perversity in the Judgment passed by the Courts below. On reading of the entire materials, it is seen that the respondent/complainant has marked a cheque as Ex.P.1 and she has entered the witness box and deposed that the cheque was issued for return of advance paid towards the sale consideration.

7. On a perusal of the materials, it is seen that the revision petitioner has not denied the execution of the cheque and signature. The defense taken by the petitioner is that notice was not served by the respondent. The cheque was issued only for security purpose and the amount mentioned in the cheque is admitted. Both the Courts have found that the defense taken by the revision petitioner is bald. The petitioner has not rebutted the statutory presumption in the manner known to law. Further the Courts below found that the petitioner has not taken any steps to get back the cheques.

8. The learned counsel for the petitioner would submit that the cheque was not issued for the reason stated in the complaint. The amount paid by the respondent has already repaid and the cheque has given to the respondent only for security purpose.

9. In support of his contention, the learned counsel has placed his reliance on the judgment of the Hon'ble Supreme Court in M.D.Thomas Versus P.S.Jaleel and another [2010 1 SCC (Cri) 1387].

10. The learned counsel for the respondent would submit that even subsequent to the filing of this revision before this Court, they undertook to repay the amount to the respondent. From the date of filing, the accused has protracted the case and there is no good defense.

11. Heard the learned counsel appearing for the petitioner as well as the learned counsel for the respondent and perused the materials placed before the Court.

12. On a perusal of the records, it is seen that the the execution of the cheque and signature of the cheque are not in dispute. Though the petitioner claimed that the cheques have been issued only for security purpose, he has not proved his defence in the manner known to law. It is well settled proposition of law. The accused need not rebut the presumption by direct evidence, she can very well rebut the presumption by preponderance of possibilities or probable defense or through cross examination of the witnesses. Admittedly, in this case, no direct evidence was taken. Therefore, this Court has to see whether presumption by preponderance of possibility or through the witness is available during the cross examination. Both the Courts have found the reason that the revision petitioner has not rebutted the presumption, since she has admitted the cheques and the signature also.

13. Considering the facts and circumstances of the case, this Court does not find any perversity or infirmity in the judgment passed by the appellate Court. Once the signature is admitted and execution is admitted, there is a presumption that the cheque was issued for legally enforceable debt or liability.

14. No doubt this presumption has to be rebutted by the petitioner in the manner known to law. Mere bald defence is not sufficient to rebut the presumption. The defense should be supported with sufficient materials. Therefore, this Court does not find any merit in the revision.

15. In the result, the revision is dismissed and the judgment passed by the learned Sessions Judge, Sessions Court-II, Kancheepuram in C.A.No.5 of 2014, dated 05.03.2016 is confirmed. Consequently, connected miscellaneous petitions are also closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge - II
Kancheepuram

2. The Judicial Magistrate-II,
Kancheepuram.

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+2 Ccs to M/s.K. Parameshwari, Advocate sr 19161

Cr1.R.C.No.605 of 2016
and
Cr1.M.P.Nos.4199 and
4200 of 2016

RR(CO)
SP(10/01/2020)



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