IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.623 of 2018

Mathew Thomas ... Petitioner/Accused

Vs

Augustine Sanjeevi Beattie ... Respondent/ complainant

Prayer:- This Criminal Revision Petition is filed against the judgement of conviction and sentence, dated 23.03.2018, made in Crl.A.No.24 of 2017, by the Principal District and Sessions Judge, Vellore, confirming the judgement of conviction and sentence, dated 21.02.2017, made in CC.No.68 of 2013, by the Judicial Magistrate, FTC, Vellore.

For Petitioner : Mr.V.Parthiban

For Respondent : Mr.C.K.M.Appaji

ORDER

1. This Criminal Revision Petition is filed against the judgement of conviction and sentence, dated 23.03.2018, made in Crl.A.No.24 of 2017, by the Principal District and Sessions Judge, Vellore, confirming the judgement of conviction and sentence, dated 21.02.2017, made in CC.No.68 of 2013, by the Judicial Magistrate, FTC, Vellore, convicting and sentencing the Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act to undergo one year Rigorous Imprisonment and to pay a compensation of Rs.4,20,000/- with interest at 6% p.a. from the date of filing of the complainant, in default to undergo three months Simple Imprisonment.
2. The facts of the case are that the Respondent/ complainant and the Petitioner/Accused are relatives and that on 01.10.2011, the Petitioner/Accused had borrowed a sum of Rs.30,000/- through Axis Bank and that on 04.10.2011, the Petitioner/Accused had borrowed another sum of Rs.3,00,000/- from the Respondent under a promissory note, agreeing to repay the said amount before 24 months with interest a 24% p.a. and the promissory note was duly attested by the wife of the accused and his mother in law and that again on 24.12.2011, the accused had borrowed a sum of Rs.40,000/- from the Respondent through Bank and lastly, the accused had

borrowed another sum of Rs.50,000/- from the Respondent through his bank on 12.01.2012, thus, in all the accused had borrowed a sum of Rs.4,20,000/- from the Respondent. The accused had been paying interest upto May 2012 and from June 2012 and July 2012, he did not pay any interest. When the Respondent informed the Petitioner/Accused about his proposal to initiate proceedings through Court to realise the amount, the accused had issued a cheque for Rs.4,50,000/- on 29.7.2012, towards principal and interest. When the said cheque was presented for collection, the same was dishonoured on 3.8.2012 for want of sufficient funds and thereby, the Respondent had issued a legal notice dated 4.8.2012 to the accused and since there was no reply from the accused, the Respondent had again sent the same notice, dated 4.8.2012, on 18.8.2012, to which a reply dated 10.09.2012 was received, with false allegations and the Respondent did not come forward to pay the amount. Hence, the Respondent had filed the complaint under Sections 138 and 142 of the Negotiable Instruments Act in CC.No.68 of 2013 before the Judicial Magistrate, FTC, Vellore.

3. Before the Trial Court, Ex.P1 to Ex.P14 were marked and PW.1 to PW.3 were examined on the side of the complainant. On the side of the Petitioner/Accused, Ex.D1 to Ex.D6 were marked and DW.1 and DW.2 were examined. Based on the evidence, the Trial Court had found the accused guilty under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year Rigorous Imprisonment and to pay a compensation of Rs.4,20,000/- with interest at 6% p.a. from the date of filing of the complainant, in default, to undergo Simple Imprisonment for three months. As against the said conviction and sentence, the Petitioner had filed Crl.A.No.24 of 2017, wherein the judgement of the Trial Court was confirmed by the lower appellate court. As against the same, this Criminal Revision Case has been filed by the Petitioners/Accused.

4. This court heard the submissions of the learned counsel on either side.

5. The learned counsel for the Petitioner would submit that there was no legally enforceable liability between the Petitioner and the Respondent and that there was no relationship of creditor and debtor between them and that when Ex.P1 promissory note is not a valid document for the reason that there is no recital in the same that “on demand”, the Trial Court failed to take into consideration Ex.P1 to base conviction and that as per DW.1, DW.2 and Ex.D5, on the date of issuance of cheque, namely, 29.07.2012 at Vellore, the Petitioner/Accused was at Kerala and he was not at the place of issuance of the cheque and there was no necessity to issue the cheque and hence, the issuance of cheque in question is highly doubtful. He would further submit that the cheque in question was issued in respect of the earlier transaction relating to car service charges and the cheque had been issued under threat and coercion and that the Trial Court totally erred in not considering the

exhibits marked by the Petitioner and accepted the exhibits of the Respondent and would seek for acquittal.

6. On the other hand, the learned counsel for the Respondent/complainant would submit that the accused had not rebutted the presumption that the cheque in question was not issued towards legally enforceable liability and that it was issued under coercion. Since the accused not having rebutted the presumption and discharged such burden, both the courts below had rightly held that there was legally enforceable debt and since the Petitioner/Accused had failed to discharge the debt, found the accused guilty under Section 138 of the Negotiable Instruments Act, which warrants no interference by this Court

7. I have gone through the records.

8. It is to be seen as to whether there is any illegality or perversity in the findings of the Trial Court and the lower appellate court, warranting interference.

9. Before the Trial Court, Ex.P1 to Ex.P14 were marked and PW.1 to PW.3 were examined on the side of the complainant. On the side of the Petitioner/Accused, Ex.D1 to Ex.D6 were marked and DW.1 and DW.2 were examined.

10. PW.1, who is the complainant, had filed the proof affidavit and marked documents Ex.P1 to Ex.P14. Ex.P1 is the promissory note. Ex.P2 dated 29.07.2012 is the cheque in question and Ex.P3 is the bank challan. Ex.P4 is the cheque return memo. Ex.P5 and Ex.P6 are the legal notices sent by the complainant. Ex.P8 is the reply sent by the accused. Ex.P13 is the bank account statement of the complainant. Ex.P14 is the bank account statement of the accused. Ex.D1 and Ex.D2 (series) are the bills relating to the car service charges of the accused. Ex.D3 (series) are the bills towards marriage expenses. Ex.D4 is receipt relating to the complaint dated 22.07.2012. Ex.D5 is the copy of the letter by DW.2 and the attendance list. Ex.D6 is the bill for repair of car. PW.1 is the complainant. PW.2 and PW.3 are the Bank Branch Managers DW.1 is the accused. DW.2 is a person from Kerala.

11. According to the learned counsel for the Petitioner, there was no legally enforceable debt between the Petitioner and the complainant, since in Ex.P1, there is no mention about as to on which date the amount was given and that it was given blank for some other purpose and the date mentioned in Ex.P2 is a fabricated, inasmuch as the Petitioner on that date was at Kerala and that after giving, Ex.D1 complaint dated 22.7.2012, given by the complainant, there was no necessity for the Petitioner to issue Ex.P2 cheque and the cheque was issued in respect of a earlier transaction relating to repairing the car of the accused.

12. While analysing the evidence, Ex.P1 is the promissory note on stamp paper and Ex.P2 is the cheque in question. The accused had not denied his signature in Ex.P1 and Ex.P2. In Ex.P1, the accused had solemnly affirmed that he will return back the capital amount on or before 24 months and that during the 24 months period, he will pay interest for

the capital amount at 24% p.a. and the wife and mother in law have signed as the witnesses. The signature of the wife of the accused and mother in law are admitted in the reply notice, dated Ex.P8. The cheque admittedly belonged to the accused. In this regard, PW.3, Bank Manager was examined. The complainant is having account in the Axis Bank and the Assistant Manager of the said bank was examined as PW.2 and he had deposed about the money transactions as stated above between the accused and complainant. However, PW.2 was not cross examined by the accused. Further, the accused did not explain as to how the cheque in question got into the hands of the complainant. Considering these aspects, the courts below had held that Ex.P1 was executed by the accused towards legally enforceable debt.

13.Though there is no mention in Ex.P1 about the date on which date it was executed, but the date of purchase of the same is 4.10.2011, there was no specific denial about the same by the accused, but it was the case of the accused that Ex.P1 was given for some other transaction with the complainant and it was the case of the complainant that Ex.P1 was executed on 4.10.2011. Further, the accused has not proved by cogent evidence, both oral and documentary evidence that Ex.P1 was given in respect of the earlier transaction in respect of the car repairing charges.

14.In order to prove that the accused was at Kerala on the date of issuance of cheque i.e. 29.07.2012, the accused had produced Ex.D5 Register of a Church in Kerala. But, on a perusal of Ex.D5, the Trial Court had found that it was not the attendance register to show the presence of the accused at Kerala on that particular date, but it was the Register, containing the names of the Members of the Church and there was no evidence to show that the accused was at Kerala on 29.07.2012 and thereby, rejected the contention of the accused that he was not at the place of issuance of cheque, i.e. Vellore. The Petitioner/Accused had marked Ex.D4 which is a receipt for the complaint given by the Petitioner's wife against the Respondent. By Ex.D4, the Petitioner had in fact confirmed that the complaint had given money to the Petitioner regarding which there was a dispute between them.

15.On perusal of the entire materials, this Court is able to see that the pleadings, oral and documentary evidence of the complainant with regard to the transaction by the accused are consistent and cogent and there is no contradiction or discrepancy. The accused failed in his attempt to rebut such mandatory presumption. The complainant has proved that the consideration was passed on to the accused from the complainant. It is not in dispute that the cheque in question belonged to the accused. The cheque was presented and returned as insufficient funds. In such circumstances, the Trial Court had found that the accused failed to discharge the burden cast on him and in the absence of any denial or contradictory version or any material to infer that the presumption is rebutted by the accused, a prima facie case has been made out on the side of the complainant.

16.Further, based on the materials, the Trial Court, though drawing the statutory presumption under Section 139 of the Negotiable Instruments Act in favour of the complainant, since the burden was not shifted, the presumption in favour of the complainant still subsists, had presumed that the cheque was issued for discharge of legally enforceable debt or liability and that since the cheque was dishonoured and debt was not discharged, the accused had committed the offence under Section 138 of the Negotiable Instruments Act and accordingly, the Trial Court had rightly convicted and sentenced the Petitioner/Accused by the impugned judgement, which was confirmed by the lower appellate court.

17.In the opinion of this Court, once it is proved that the cheque was issued to discharge the legally enforceable debt, then it is for the Petitioner/Accused to rebut the presumption in the manner known to law, but he failed to do so. On reading of the entire evidence, this Court does not find any perversity in appreciation of the evidence or interpretation of the provisions of law by the Trial Court and the lower appellate court as well. Further, there are no merits in this Criminal Revision Case.

18.In the result, this Criminal Revision Case is dismissed, confirming the impugned judgements of both the courts below. The bail bond if any executed by the Petitioner/Accused shall stand cancelled. The Trial Court shall take necessary steps to secure the Petitioner/Accused, to undergo the remaining period of sentence, if any and for recovery of the compensation awarded.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The Principal District and Sessions Judge, Vellore
2.The Judicial Magistrate, FTC, Vellore
3.The Public Prosecutor, High Court, Madras

+1cc to Mr.C.K.M.Appaji, Advocate, S.R.No. 99233
+1cc to Mr.E.Kannadasan, Advocate, S.R.No. 99096

Crl.RC.No.623 of 2018

BP(CO)
GN(06/01/2020)