

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.R.C.No.330 of 2019

and

Crl.M.P.Nos.4351, 4353 & 4355 of 2019

S.Mohan

.. Petitioner/Appellant

Vs

M.Sankaranarayanan

... Respondent/Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Criminal Procedure Code to set aside the conviction imposed in the judgment dated 27.04.2017 made in S.T.C.No.1582 of 2015 on the file of the learned Judicial Magistrate-I, Mannargudi and the same was modified by judgment dated 20.02.2019 made in C.A.No.22 of 2017 on the file of the learned Additional Sessions Judge (Fast Track Court) Thiruvavur by allowing this Criminal Revision.

For Petitioner : Mr.Jayaraman K.

O R D E R

This revision case has been filed by the petitioner to set aside the judgment dated 27.04.2017 in S.T.C.No.1582 of 2015 on the file of the learned Judicial Magistrate-I, Mannargudi, which was modified by the judgment dated 20.02.2019 in C.A.No.22 of 2017 on the file of the learned Additional Sessions Judge (Fast Track Court) Thiruvavur.

2. The revision petitioner is the accused and the respondent is the complainant. The case of the complainant/respondent is that the revision petitioner borrowed a sum of Rs.5,00,000/- as loan from the respondent for his family expenses and improvement of his business and promised to repay the same. In order to repay the said loan amount, the accused has issued a post dated cheque in favour of the respondent. The respondent has deposited the cheque in Karur Visva Bank for encashment. However, the same was returned with an endorsement as 'funds insufficient'. Thereafter, the respondent has issued a statutory notice to the accused on 09.07.2015, demanding the money. The petitioner has received the notice and sent a reply on 21.07.2015 to the respondent with false allegation. Hence, the respondent has filed a private complaint against the petitioner under section 200 of Cr.P.C for the offences under Section 138 of the Negotiable Instruments

Act, before the learned Judicial Magistrate-I, Mannargudi, for offence under Section 138 of Negotiable Instruments Act. The same was taken up on file in S.T.C.No.1582 of 2015. After fulfilled trial, the learned Magistrate found the accused guilty for offence under Section 138 of NI Act and convicted and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs.5,50,000/- to the respondent as compensation, in default, to undergo simple imprisonment for the period of three months.

3. Challenging the judgment of the learned Magistrate-I, Mannargudi, the petitioner herein has filed an appeal before the learned Principal District and Sessions Judge, Thiruvarur. The learned Principal District and Sessions Judge, taken the appeal on file in C.A.No.22 of 2017 and made over the same to the learned Additional Sessions Judge, (Fast Track Mahila Court, Thiruvarur). After hearing the arguments, the learned Judge has confirmed the conviction but modified the sentence. As against the said judgment, the revision petitioner/accused has preferred the present revision before this Court.

4. The learned counsel for the petitioner would submit that the respondent/complainant has not stated on what date the loan amount of Rs.5,00,000/- was demanded by the petitioner and advanced by the complainant. The petitioner has got a loan for a sum of Rs.50,000/- from the respondent and the same was repaid. The petitioner has issued the post dated cheque only for security purpose. However after repayment of the loan, the respondent has not returned the cheque to the petitioner. In cross examination, P.W.1 has admitted that the petitioner has received a loan from him for a sum of Rs.50,000/- and the same was repaid by the petitioner.

5. The learned counsel for the petitioner would further submit that for the said loan of Rs.5,00,000/-, the respondent has not received any document from the accused. Therefore, the complainant did not come to the Court with clean hands. The respondent has not filed any document to show that he has executed the cheque for a sum of Rs.5,00,000/-. Without any documents, it is not believable that the respondent has lent a sum of Rs.5,00,000/- to the petitioner. In support of his contention, the learned counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the case of Vijay and Laxman and another reported in 2013 (3) SCC 86 and this Court, in the case of P.Gnanambigai Vs. S.Krishnasamy and another reported in 2011 (1) LW 366. Both the Courts below have failed to consider the legal proposition and dismissed the appeal by convicting the accused, which warrants interference of this Court.

6. I have carefully considered the submissions made by the learned counsel for the petitioner and perused the materials available on record.

7. The case of the respondent is that the accused has borrowed a sum of Rs.5,00,000/- from the respondent for his family expenses and business, and had issued a cheque bearing No.981042 for Rs.5,00,000/-. When the respondent presented the cheque for collection, it was returned as "insufficient funds". The respondent sent a notice to the petitioner through an advocate informing about the dishonour of cheque and requested him to pay the amount. Despite receipt of notice, the petitioner did not pay the amount. Hence, the respondent preferred a complaint before the Judicial Magistrate-II, Mannargudi, under Section 138 of the Negotiable Instruments Act. The case was taken on file in S.T.C.No.1582 of 2015 and summons were issued to the petitioner. The respondent has examined himself as witness and marked five documents and the evidence of the respondent was closed. The petitioner neither produced any witnesses nor marked any documents. After hearing both sides, the learned Magistrate convicted and sentenced the petitioner as aforesaid. Against the said order, the petitioner herein has filed an appeal before the learned Principal District and Sessions Court, Tiruvarur. After hearing the arguments advanced on either side, the learned Judge, confirmed the conviction and modified the sentence. Hence, the petitioner/accused has filed this revision.

8. The respondent has filed the complaint before the Court. He has examined himself as P.W.1 and produced the cheque and also other documents, as per Section 138 of NI Act. Therefore he has proved the initial burden that the cheque was issued for a legally enforceable debt. As per the Sections 118 and 138 of NI Act, it is for the accused to rebut the presumption in the manner known to law. No doubt the said presumption is rebuttable. The accused need not rebut the presumption by direct evidence. He can very well rebut the presumption by preponderance of possibility or probable defence, or even otherwise through cross examination of the witnesses.

9. On a careful perusal of the evidence, it is seen that during cross examination, the petitioner/accused has clearly stated that at the time of borrowal, he has issued three blank cheque leaves to the respondent and promissory note, when he obtained loan of Rs.50,000/- But he has not proved the defence taken by him. Once execution of the cheque is admitted, it is for the petitioner to rebut the presumption that he has not issued the cheque for discharging the legally enforceable debt or liability.

10. On reading of the entire materials, this Court does not find any perversity or infirmity in the judgment passed by the learned Additional Sessions Judge, Tiruvarur in C.A.No.22 of 2017 dated 20.02.2019 and there is no merit in this Revision Case.

11. Accordingly, this Criminal Revision Case is dismissed by confirming the judgment in C.A.No.22 of 2017, dated 20.02.2019, on the filed of the learned Additional Sessions Judge (Fast Track Court), Thiruvarur. Consequently, the connected Criminal Miscellaneous Petitions are also closed.

12. The Trial Court is directed to take steps to secure the custody of the petitioner/accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge
(Fast Track Court) Thiruvarur.
2. The Judicial Magistrate-I, Mannargudi.

+1cc to Mr.K.Jayaraman, Advocate, SR.No.28798.

CrI.R.C.No.330 of 2019
and

CrI.M.P.Nos.4351, 4353 & 4355 of 2019

CP(CO)
CSR:21/01/2020

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