

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.R.C.No.928 of 2018 and
CrI.M.P.Nos.10787 and 10788 of 2018

V.Govindaraj

...Petitioner/Accused

-Vs-

M.Mohan

...Respondent/Complainant

Criminal Revision Petition filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records and to set aside the judgment in C.A.No.51 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri by judgment dated 04.06.2018 confirming the sentence imposed in S.T.C.No.1178 of 2016 on the file of the learned Judicial Magistrate-II, Krishnagiri, dated 27.10.2017.

For Petitioner : Mr.A.Velmurugan

For Respondent : Mr.L.Ramu

O R D E R

The revision petitioner is accused and the respondent is complainant. The case of the respondent/complainant is that the petitioner/accused and one Muniraj have borrowed a sum of Rs.25,00,000/- for their business purpose. On 07.10.2015, the respondent paid a sum of Rs.25,00,000/- to the revision petitioner and the said Muniraj and they have executed an agreement in favour of the respondent, promising to repay the same within a period of four months. After receiving the said amount the accused have issued cheque bearing No.794101 of Indian Overseas Bank, Royakottai, Krishnagiri and the said Muniraj issued four cheques bearing Nos.000006 to 000009 of HDFC Bank, Krishnagiri Branch to discharge their liability. The respondent demanded the money on 13.03.2016, the accused and the said Muniraj informed him that they have sufficient funds in the Bank and said to fill the cheque issued by the accused for a sum of Rs.5,00,000/- and for a sum of Rs.20,00,000/- for the cheques issued by the said Muniraj and to deposit the same for encashment and the same was returned as 'funds insufficient'. After issuing the cheque, the accused closed the account in

order to defraud the claim of the respondent. The cheques issued by the said Muniraj has also dishonored for the reason that ''Account closed'' on 17.06.2016. Thereafter, on 18.06.2016, the respondent issued statutory notice to the petitioner and the same was received by the accused. The accused neither returned the money nor he sent any reply. Therefore, the respondent filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate-I, Krishnagiri for offence under Section 138 of Negotiable Instruments Act. After taking cognizance of the complaint and completing the legal formalities, in order to prove the case of the complaint, one witnesses was examined and five documents were marked.

2. After completion of evidence on the side of the complainant when the incriminating materials culled out and put before the accused he denied the same as false and also on the side of the accused, no witness was examined and no document was marked. After completing the trial, the learned Magistrate found the accused guilty for offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo simple imprisonment for the period of 10 months and to pay a fine of Rs.4,000/- in default, to undergo simple imprisonment for the period of two months. Challenging the order, the petitioner had filed an appeal before the learned Principal Sessions Judge, Krishnagiri. After hearing the arguments on either side, the learned Sessions Judge, confirmed the order of the learned Judicial Magistrate-II, Krishnagiri. Challenging the order of the learned Principal Sessions Judge in C.A.No.51 of 2017 dated 04.06.2018, the petitioner has preferred the present revision before this Court.

3. The learned counsel for the petitioner would submit that the respondent/complainant has not stated specifically how much amount borrowed by the present revision petitioner and how much amount borrowed by the said Muniraj. The petitioner has not borrowed any amount and has not issued cheque to discharge the liability. The respondent has not shown any particulars regarding the payment of the money to the revision petitioner and Muniraj and he has not shown any income tax returns. Further the learned counsel for the petitioner would submit that the respondent has not shown any documentary evidence or agreement. The respondent has produced only blank cheque before the Court below. Those documents are necessary to the respondent to prove his case and when there was no legally enforceable debt. These facts has not been considered by both the Courts below, which warrants interference. In support of his contention, the learned counsel relied on the decisions of the Hon'ble Supreme Court in the case of (Anss Rajashekar Versus Augustus Jeba Ananth) reported in CDJ 2019 SCC 338.

4. The learned counsel for the respondent would submit that during the cross examination, the petitioner had not denied the signature found in the cheque and he has admitted the issuance of cheque. The trial Court has rightly observed that when the petitioner admitted the signature, he has to prove the fact, how the cheque had been in the hands of the respondent and in the absence of any proof for the above, the denial of the petitioner cannot be accepted. Both the Courts have found the reason that the revision petitioner has not rebutted the presumption, since she has admitted the execution of the cheques and the signature also. The petitioner has not rebutted the statutory presumption in the manner known to law either through direct evidence or preponderance of probabilities. Therefore, the Sessions Judge has rightly re-appreciated the documents and convicted the petitioner, hence, there is no need for interference.

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

6. It is the case of the respondent/complainant is that the revision petitioner and one Muniraj borrowed a sum of Rs.25,00,000/- from the respondent, for which, the revision petitioner issued a post dated cheque for a sum of Rs.5,00,000/- and the said Muniraj issued four cheques for a sum of Rs.20,00,000/-. When the respondent demanded the money, the accused asked him to present the cheque before the Bank. The respondent has presented the cheque before the Bank and the same was returned for want of sufficient funds. Therefore, the respondent issued statutory notice to the revision petitioner. After receipt of the same, the petitioner has not sent any reply. Therefore, the respondent filed a private complaint before the learned Judicial Magistrate-I, Krishnagiri. After hearing the case, the Magistrate dismissed the petition. As against the same, the petitioner herein has filed an appeal before the learned Principal Sessions Judge. The learned Sessions Judge has also confirmed the order passed by the trial Court. Hence, the petitioner filed the present revision.

7. On reading of the records, it could be seen that during the cross examination, the revision petitioner/accused admitted the execution of cheque and signature found in the cheque. The respondent/complainant has proved the initial burden it is for the petitioner/accused has to prove under what circumstances he has issued the blank cheque. It is for revision petitioner to rebut the presumption that the cheque is not issued for discharging legally enforceable debt. Therefore, the legal presumption under Section 138 of NI Act, once the petitioner admitted the issuance of cheque, he has to rebut the presumption that there is no legally enforceable debt or liability.

8. On reading of the materials and records, it is seen that the revision petitioner/accused himself admitted that even after receipt of the notice as well as the complaint, the accused has not sent any reply by stating that he had issued the cheque only for the purpose of getting loan from the complainant. On the side of the defence and during the cross examination, the Court has found that the petitioner has admitted the signature and also execution of the cheque. Once he has admitted that he delivered the blank cheque to the respondent, it is for him to prove that under what circumstances, he executed the blank cheque. But, the respondent has not specifically stated that how much amount was borrowed by the present revision petitioner and how much amount borrowed by the said Muniraj. In order to prove the same, the respondent has produced the cheque as well as agreement in which both the accused signed and the same was also accepted by the petitioner/accused during the cross examination. Once the initial burden is proved by the respondent, it is the duty of the petitioner to rebut the presumption by probable defence. However, the petitioner has failed to rebut the presumption. Mere denial of receipt of amount, is not sufficient. The accused has not produce any documentary evidence to prove the defence and by examining any witness. The respondent has clearly stated in his complaint, both the accused and one Muniraj requested him to lend a sum of Rs.25,00,000/- for which the petitioner issued one cheque and said Muniraj issued four cheques. Admittedly, the complainant received five cheques by lending of Rs.25,00,000/- When the cheques were presented in the bank, he filled one cheque for a sum of Rs.5,00,000/- given by the petitioner/accused and filled one cheque for a sum of Rs.20,00,000/- given by Muniraj. Therefore, this Court does not find any perversity in the judgment passed by both the Courts below.

9. The appellate Court is a final Court of fact finding Court, it has to deal with the case independently with the materials available on records before it and by considering the suggestions put by the petitioner/accused before the respondent during the cross examination also. Once the petitioner has admitted the execution of the cheque and not denied the signature, both the Courts below have rightly drawn the statutory presumption under Section 139 of Negotiable Instruments Act. It is for the accused to rebut the presumption in the manner known to law.

10. On reading of the entire materials, this Court has also found that the revision petitioner/accused has not rebutted the statutory presumption in the manner known to law. The defence taken by the accused is bald defence and without any substance and materials. Therefore, both the Court below have rightly

rejected the defence taken by the petitioner/accused and draw the statutory presumption under Section 139 of NI Act. 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 whether there is any perversity in appreciation of evidence while deciding the case by the appellate Court.

11. Considering the facts and circumstances of the case, this Court feels that there is no merit in the revision and both the Court below have given sufficient reasons to reject the case of the defence. Under these circumstances, this Court is not inclined to interfere with the judgment of both the Courts below.

12. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are also closed. The trial Court is directed to secure the custody of the accused to undergo the remaining period of imprisonment, if any.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge, Krishnagiri.
2. The Judicial Magistrate-II, Krishnagiri.

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

+2 CCS to Mr.A.Velmurugan, Advocate sr 28431.
+1 CC to Mr.L.Ramu, advocate sr 28985.

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AK(CO)
SP(21/01/2020)