IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.946 of 2018 and
Crl.M.P.No.10934 of 2018

S.Duraikumar ...Petitioner

-Vs-

Thilakavathi ...Respondent

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 09.07.2018 passed in C.A.No.61 of 2018 on the file of the II Additional District and Sessions Court, Erode, confirming the judgment dated 01.02.2018 passed in S.T.C.No.323 of 2014 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode, by allowing this criminal revision and convict the respondent.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mr.P.Palaninathan

O R D E R

The petitioner is complainant and respondent is accused. The petitioner has filed a private complaint against the respondent under Section 200 of Cr.P.C for the offence punishable under Section 138 of Negotiable Instruments Act (in short “NI Act”), which was taken on file in S.T.C.No.323 of 2014 by the learned Judicial Magistrate, Fast Track Court No.I, Erode.

2 In order to prove the case of the complainant, the petitioner/complainant was examined himself as P.W.1 and marked documents Ex.P1 to Ex.P8. On the side of the defence no one was examined and Ex.D1 to Ex.D3 were marked.

3 The learned Judicial Magistrate, after trial, found the accused not guilty and hence by judgment dated 01.02.2018 acquitted the respondent/accused observing that the accused rebutted the statutory presumption under 118 and 139 of NI Act.

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Against the judgment of acquittal, the complainant has filed an appeal and the lower appellate Court also by judgment dated 09.07.2018, dismissed the appeal and confirmed the judgment of acquittal made by the trial Court. The petitioner is before this Court against concurrent finding of judgment of acquittal.

4 The learned counsel for the petitioner/complainant would submit that on 04.05.2014 the respondent had borrowed a sum of Rs.5,00,000/- for her urgent needs from the petitioner and on the same day issued a post dated cheque bearing No.775184 dated 02.06.2014 drawn at Bank of Baroda in favour of the petitioner, which was marked as Ex.P1. The petitioner had presented the cheque for collection on 02.06.2014 and the same was returned as "insufficient funds" on 03.06.2014 and the return memo issued by the Bank has been marked as Ex.P2. Therefore, the petitioner caused statutory notice dated 06.06.2014/Ex.P3 and the same was received by the respondent on 16.06.2014 acknowledgment for the same has also been marked as Ex.P4. The respondent, after receipt of the notice, has sent a reply containing false denials, which was marked as Ex.P5. Both the Courts below had erred in arriving at a conclusion that the petitioner has not proved his claim. The petitioner has marked two sale deeds in his favour, from which he is getting money, which would sufficient to prove the lending capacity of the petitioner. Further, question of source of income is only a subsequent defence and that was also proved by the petitioner.

5 According to learned counsel for the petitioner, when the respondent admitted the signature and execution of cheque, presumption under Section 118 and 139 would come into play and it is for the respondent/accused to rebut the same. The respondent has not produced any document, except producing complaint filed against the petitioner, Renuka Devi and Ramamoorthy, which was also subsequent to the filing of the present case by the petitioner. The respondent/accused has failed to examine any witnesses on her side, when her defence was the cheque was not issued to the petitioner and was issued to Renuka Devi and Ramamoorthy. Therefore, the order of acquittal made by both the Courts below warrants serious interference.

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6 According to the learned counsel for the respondent/accused, the respondent did not know the petitioner before filing of the present case. She had not borrowed any amount from the petitioner as alleged by him and not issued the subject cheque to discharge the same. In fact she had given the subject cheque to Renuka Devi towards security for the amount given by her in the Chit, which had been conducted by the Rukmani Devi and the same was misused by her for filing the present case through the petitioner herein. The petitioner had

not proved his lending capacity and the respondent also lodged a complaint against the petitioner and others. The petitioner had not produced any IT statement to prove his claim. Both the Courts below, after appreciating all the evidences had come to a final conclusion that the respondent not found guilty of offence. The above conclusion does not call for any interference.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 The petitioner has filed this revision case against the concurrent judgment of acquittal made by the Courts below. The main contention of the respondent/accused is that he had not issued the cheque to the petitioner to discharge the legally enforceable debt and further stated that he filed complaint against the petitioner and others. Further the respondent issued the subject cheque to Rukmani Devi towards security for the amount given by her in the chit conducted by the Rukmanidevi. On reading of the entire records, it reveal that the respondent had not chosen to examine the above Rukmani Devi to prove her defence. Further no document was produced by the respondent to prove the chit transaction between her and said Rukmani Devi. Further more, the complaint filed by the respondent against the petitioner and others was subsequent date to the present case and the trial Court based on the above complaint had come to the conclusion that the respondent rebutted the presumption under Section 139 of NI Act. The respondent admitted the signature and issuance of cheque, but he stated the cheque was not issued to the petitioner and issued to Rukmanidevi. To prove the above version, the petitioner has failed to examine the abvoe Rukmanidevi as witness.

9 No doubt, presumption under Section 118 and 139 is a rebuttable presumption. The accused need not come into witness box and let in direct evidence to rebut the presumption, she can rebut the presumption through preponderance of probability or probable defence even by cross examining the witnesses. In this case, on reading of the entire materials placed on record, it reveal that the respondent/accused has failed to rebut the presumption drawn in favour of the respondent/complainant.

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10 The petitioner/complainant has proved his initial burden and it is for the accused to rebut the presumption, whereas in this case the accused has failed to rebut the presumption and produced only three documents, which are subsequent to the present complaint. Both the Courts below had failed to note the above fact and the order of acquittal warrants interference.

11 No doubt, this Court, being a revisional Court, has no

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power to re-assess the evidence and substitute its view on finding of fact. This Court keeps in view that presumption under Section 139 of NI Act is rebuttable presumption. Once the accused admitted the signature found in the cheque, it is for her to rebut the said presumption that the subject cheque was not issued for legally enforceable debt or liability. In this case, on reading of the records, the respondent has not rebutted the statutory presumption in the manner known to law. Therefore, this Court finds that there is perversity in appreciation of evidence in respect of rebuttable presumption.

12 In the result, the criminal revision is allowed and the respondent is found guilty of offence punishable under Seciton 138 of NI Act and is hereby convicted. Consequently connected miscellaneous petition is closed. The respondent/accused is directed to appear before this Court on 12.04.2019 "for Question of Sentence"

List on 12.04.2019 "for Question of Sentence".

Cgi 04.04.2019

Crl.R.C.No.946 of 2018 and
Crl.M.P.No.10934 of 2018

For Question of Sentence

This Matter having been posted today "For Question of Sentence" on 12.04.2019 pursuant to the order of this court dated 04.04.2019 and made herein in the presence of the aforesaid counsels on the either side, the court made the following order:-

Crl.RC.No.946 of 2018
and
Crl.M.P.No.5268 of 2019

For Question of Sentence

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This petition under Section 147 of Negotiable Instrument Act, to compound the said case in S.T.C.No.323 of 2014 on the file of the Judicial Magistrate Court (Fast Tract Court No.I), Erode, which is the subject matter of the above revision in Crl.R.C.No.946 of 2018.

2. When the matter is posted today "for Question of Sentence", at this Stage, the learned counsel for the accused

has filed a petition under Section 147 of Negotiable Instrument Act, to compound the said case in S.T.C.No.323/2014 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode. He also has stated that 15% of the equivalent to the cheque amount has been deposited before the Registry as compounding fee, since the offence under Section 138 of Negotiable Instrument Act is a compoundable offence.

3. The learned counsel for the complainant also appeared and submitted that the cheque amount was received by the Complainant and he has no objection to compound the offence.

4. Since the parties have settled the matter and also filed the petition for compounding the offence, following the guidelines issued by the Honourable Supreme Court, in the case of Damodar S. Prabhu Vs. Sayed Babalal H. reported in (2010) 5 SCC 663, in the event of offence under Section 138 of Negotiable Instrument Act, the offence can be compounded even during the pendency of the appeal or at the stage of revision. In case the parties are ready to compound the offence, they should approach the Court and they have to pay a sum equal to 15 % of the Cheque amount.

5. Taking in to account, the petition filed for compounding the offence under Section 138 of Negotiable Instrument Act and as the fact that the complainant also admitted that the matter has been settled, hence, the offence under Section 138 of Negotiable Instrument Act is compounded. Therefore, the accused is acquitted from the charges.

6. Registry is directed to remit the compounding fee deposited by the petitioner to the credit of Tamil Nadu State Legal Authority, Chennai.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To
1.The II Additional District Sessions Court, Erode.

2.The Principal District Judge, Erode.

3.The Judicial Magistrate Court (Fast Track Court No.I), Erode.

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4.The Chief Judicial Magistrate, Erode.

5.Tamil Nadu State Legal Authority, Chennai.

6.The Public Prosecutor, High Court, Madras.

+1cc to Mr.P.Palaninathan, Advocate, S.R.No.36226

Crl.R.C.No.946 of 2018
and
Crl.M.P.No.5268 of 2019

RJI(CO)
CS/30/04/2019

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