

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.371 of 2019 and  
Crl.M.P.No.5492 of 2019

T.Chandra

... Petitioner

vs.

N.Selvi

... Respondent

The Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C, to set aside the order dated 10.12.2018 passed in Criminal Appeal No.239 of 2017 on the file of the learned III Additional District and Sessions Judge, Coimbatore, confirming the judgment dated 14.07.2017 in C.C.No.457 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court II at Magisterial Level, Coimbatore.

For Petitioner : Mr.M.Santhanaraman

ORDER

The criminal revision has been filed against the concurrent judgment of conviction made by the Courts below for the offence under Section 138 of Negotiable Instruments Act (in short 'NI Act').

2 The respondent is complainant and petitioner is accused. The respondent filed a private complaint against the petitioner for the offence punishable under Section 138 of NI Act and the same was taken on file in C.C.No.457 of 2017 by the learned Judicial Magistrate, Fast Track Court - II at Magisterial Level, Coimbatore. The respondent/complainant was examined as P.W.1 and the trial Court after giving several opportunities to the petitioner/accused to cross examine P.W.1, since the accused did not utilise the opportunity, the learned Judicial Magistrate, with the available evidence and materials, by judgment dated 14.07.2017, convicted the petitioner/accused and sentenced her to undergo simple imprisonment for one year with fine of Rs.10,000/-, in default, to undergo two months simple imprisonment. Against the judgment of conviction, the petitioner/accused had preferred an appeal before the learned III Additional District and Sessions Judge, Coimbatore, in

C.A.No.239 of 2017. The learned Sessions Judge, since P.W.1 was not cross examined by the accused, had suo motu invoked Section 391 of Cr.P.C. and directed P.W.1 to appear before the Court and defence side cross examined P.W.1 and after hearing arguments advanced on either side, by judgment dated 10.12.2018, dismissed the appeal and confirmed the judgment of conviction made by the trial Court. Aggrieved against the concurrent judgment of conviction, the petitioner is before this Court.

3 According to learned counsel appearing for petitioner, the lower appellate Court had not allowed the petitioner to cross examine P.W.1 and had pronounced the judgment of conviction. The Session Court, suo motu invoked Section 391 of Cr.P.C and P.W.1 was cross examined by the accused, but, subsequently, when the matter was posted for further evidence, the learned Sessions Judge closed the evidence and pronounced the judgment, which warrants serious interference. Further the petitioner/accused had issued the cheque only towards security for chit namely Arockiyamadha Chit Funds and the same has been mis-used by the respondent/complainant and filed this case. The respondent/complainant herself stated that she has no balance in her account on the date of lending of money to the petitioner/accused. Once the complainant has not proved her income for lending money, it amount to rebuttal of presumption, and it favours the accused. In support of his contentions, the learned counsel has relied on the decision of the Hon'ble Supreme Court reported in CDJ 2014 SC 934 (K.Subramani Vs. K.Damodara Naidu).

4 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5 The petitioner filed this revision against the concurrent judgment of conviction made by both the Courts below. The petitioner/accused admitted his signature and execution of cheque. The learned counsel for the petitioner/accused has contended that when Section 391 invoked, the petitioner must be given opportunity to led further evidence. It is seen that the trial Court has given several opportunities to the petitioner/accused to cross examine P.W.1 and the petitioner failed to use the same and hence the trial Court, with the available materials, had pronounced the judgment of conviction. The lower appellate Court, since the P.W.1 was not cross examined by the petitioner and in order to give an opportunity to the petitioner/accused, had suo motu invoked Section 391 of Cr.P.C, and after hearing both the parties, had dismissed the appeal. The petitioner had neither filed any application to recall P.W.1 nor challenged the closure of evidence by the lower appellate Court. The accused had not filed any application to recall P.W.1 and it is the Court, who had suo motu invoked

Section 391 and under this circumstances, it is not necessary that opportunity has to be given to the accused to let in further evidence, without even any application for the same. Therefore, the concurrent judgment of conviction made by both the Courts below is appears to be well founded and the same does not call for any interference.

6 Further, the complainant had stated that she pledged jwells and lent money to the accused and she has no balance in her Bank Account. She further stated that she is doing tailoring business and her husband is also doing fabrication of used Cars and she has money to lend the same to the accused. The above facts are not questioned by the petitioner/accused. The petitioner had admitted the execution of cheque and signature and her only contention is that it has been given towards security and the respondent/complainant had not returned the cheque to the petitioner, even after repeated demands by the petitioner. The petitioner had not taken any steps legally to get back the cheque. Once execution and signature found in the cheque is admitted, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or through cross examining the witnesses. In this case, on reading of the entire materials placed on record, it reveal that the petitioner/accused has failed to rebut the presumption drawn in favour of the respondent/complainant, but, he attempted to do the same and it would not suffice. Further the decision cited by the petitioner/accused is not applicable to the case on hand, since in that case the complainant stated that he has money in her account, whereas in this case, the complainant had stated that she has no money in the Bank account and pledged jwells, which fact has not been questioned by the petitioner/accused. This Court does not find any perversity in the order of both the Courts below and there is no merit and substance in the revision case.

7 In the result, the criminal revision case is dismissed. Consequently, connected miscellaneous petition is closed. Trial Court is directed to secure the custody of the accused to undergo remaining period of imprisonment, if any.

s/d-  
Assistant Registrar(CS VIII)

True Copy

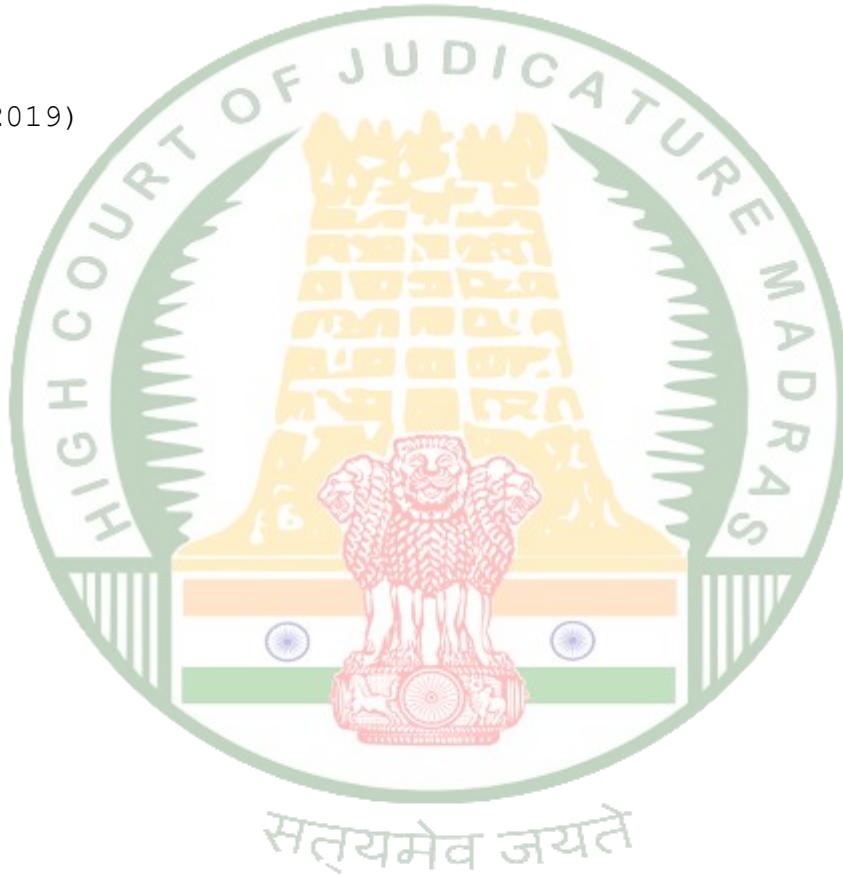
Sub-Assistant Registrar

cgi  
To

1. The III Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate, Fast Track Court II at Magisterial Level, Coimbatore.

Crl.R.C.No.371 of 2019 and  
Crl.M.P.No.5492 of 2019

AD(CO)  
SP(12/09/2019)



WEB COPY