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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.375 of 2019

and

Crl.M.P.Nos.5498 & 5499 of 2019

K.Rajesh Kanna

Petitioner/Accused

Vs

M.P.Kumaran

Respondent/Complainant

PRAYER: Criminal Revision case filed under Section 397 and 401 of the Criminal Procedure Code, to call for the records relating to the Judgment dated 12.02.2019 passed in Criminal Appeal No.243 of 2016 by the learned III additional Sessions Court, Chennai, confirming the Judgment and conviction passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.2767 of 2016 dated 11.08.2016 with 2 years Simple Imprisonment and to pay compenstation of Rs.30,00,000/- the cheque amount to the complainant within 3 months form the date of Judgment and set aside the same.

For Petitioner : Mr.R.Krishnan

ORDER

The revision petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the petitioner under Section 200 of Cr.P.C., before the IX Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2767 of 2016 for the offence under Section 138 of the Negotiable Instruments Act. The learned IX Metropolitan Magistrate, Saidapet, Chennai, after taking cognizance of the complaint and completing the legal formalities, found guilty of the accused for the offence under Section 138 of the Negotiable Instrument Act and convicted and sentenced him to undergo Simple Imprisonment for two years and to pay the cheque amount of a sum of Rs.30,00,000/- as compensation, in default to undergo three months Simple Imprisonment. As against the judgment of the learned IX Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.2767 of 2016 the petitioner herein filed a Criminal Appeal before the learned III Additional Sessions Judge, Chennai., in Crl.A.No.243 of 2016.

2 After hearing on either side, the III Additional Sessions Judge, Chennai, dismissed the appeal in Crl.A.No.243 of 2016 and confirmed the judgment of the learned IX Metropolitan



Magistrate, Saidapet, Chennai, in C.C.No.2767 of 2016. As against the judgment of dismissal the revision petitioner filed a present Criminal Revision Case before this Court.

3 The learned counsel for the petitioner would submit that the respondent has no means to lend a huge amount. The respondent has stated that in his proof affidavit there was several transaction between them and to pay a sum of Rs.31,00,000/- thereafter the petitioner issued 2 cheques, one is for a sum of Rs.1,00,000/- dated 03.02.2010 which was honoured and on 25.05.2010 then he issued a cheque for Rs.30,00,000/- which was returned as "Account Closed". Further he would submit that, he has admitted that he has no money in the bank or to lend such a huge amount. Infact he closed the account in the year of 2007 itself. Therefore, he could not have issued a cheque on 25.05.2010. Therefore, both the Courts have failed to consider the presumption was rebutted by the accused by preponderance of probabilities and also not considered the facts in large, which warrants interference of this Court.

4 It is the case of the respondent/complainant is that the revision petitioner is the family friend, based on the said friendship the petitioner had borrowed a sum of Rs.31,00,000/- from the respondents on various dates for his business purpose, and he promised to repay the said amount within three months. The revision petitioner failed to keep his promise and even after consistent demand made by the respondent/complainant, the revision petitioner/accused has not repaid it, the petitioner approached the respondent on 03.02.2010 and issued a cheque for a sum of Rs.1,00,000/- . The respondent presented the said cheque on the same day in his bank which was honoured. Thereafter, he issued a cheque for a sum of Rs.30,00,000/- on 25.05.2010 drawn in UTI Bank, T.Nagar, Chennai with full consent of the petitioner. When the respondent presented the said cheque for collection in Central Bank, Pallavaram, on the same day, the said cheque was returned with an endorsement "account closed". The above intimation was received by the complainant on the next day i.e., 27.05.2010.

5 Subsequently, the respondent issued a statutory notice on 01.06.2010. The accused received the said notice on 03.06.2010 and gave a reply with false averments. Therefore, the complainant/respondent filed a private complaint against the revision petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act, before the learned IX Metropolitan Magistrate, Saidapet, Chennai. The learned IX Metropolitan Magistrate, Saidapet, Chennai after considering the entire facts and convicted the accused. As against the order of the learned IX Metropolitan Magistrate, Saidapet, Chennai, the



petitioner filed an appeal before the learned III Additional Sessions Judge, Chennai. After an hearing of the appeal, the learned III Additional Sessions Judge, Chennai dismissed the appeal and confirmed the judgment passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai.

6 The main contention raised by the learned counsel for the petitioner that he closed his account long back in the year of 2007 i.e, on 30.07.2007. The petitioner/accused issued a cheque on 25.05.2010 for a sum of Rs.30,00,000/- which was returned with an endorsement "account closed" on 26.05.2010. Definitely, the cheque could have been issued, prior to closing of the account by the petitioner/accused the petitioner has not offered any valid explanation as to why he has not taken any action for three years to get back the cheque and even he has not issued any notice to get back the cheque or any complaint to the effect that one blank cheque was stolen or lost before the police or initiated any legal proceedings to get back the cheques. Further at the time of closing the account, whether he has returned all the cheque leaves or not, the cheques were returned to the bank and the details of the cheques were not cleared on the date of closing the account. These particulars have not been given by the Bank Manager.

7 Both the Courts below have found that the cheque belongs to the revision petitioner and the signature found in the cheque is also admitted by the revision petitioner. Further, the petitioner has admitted that he is a friend of the respondent for more than 20 years and they had money transaction. The respondent proved that petitioner issued a cheque to discharge legally enforceable debt. Therefore, the respondent/complainant filed a private complaint before the learned IX Metropolitan Magistrate, Saidapet, Chennai. The complainant has also issued a bank return memo and statutory notice. The petitioner issued a cheque and the same was presented before the bank for clearance the same was returned for the reason "account closed". Therefore, he has proved his initial burden. It is for the revision petitioner to rebut the presumption.

8 On reading of the entire materials, this Court has also find that the revision petitioner/accused has not rebutted the statutory presumption in the manner known to law. The defence taken by th petitioner/accused is bald defence and without any subsistence and materials. Therefore, both the Courts below have rightly rejected the defence taken by the petitioner/accused and drawn the statutory presumption under Section 139 of Negotiable Instruments Act. It is a well settled proposition that while exercising the revisional jurisdiction, this Court need not sit in the arm chair 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.

9 Considering the facts and circumstances of the case, this Court feels that there is no merit in the revision and finds no perversity in the order passed by both the Courts below and this Court is not inclined to interfere with the judgment of both the Courts below.

10 In the result, this Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbn

To

- 1.The learned IX Metropolitan Magistrate,
Saidapet, Chennai.
- 2.The learned III Additional Sessions Judge,
Chennai.

+lcc to Mr.R.Krishnan, Advocate sr.40226

Cr1.R.C.No.375 of 2019
and
Cr1.M.P.Nos.5498 & 5499 of 2019

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nr 08/08/2019