

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.384 of 2019 and
Crl.M.P.Nos.5640 and 5641 of 2019

K.Girishkumar

...Petitioner/Accused

-Vs-

T.C.Karunanithi

...Respondent/Complainant

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment passed against the petitioner in Crl.A.No.160 of 2016 by the learned IV Additional District and Sessions Judge, Coimbatore, dated 06.10.2018 modifying the judgment made in C.C.No.335 of 2013 by the learned Judicial Magistrate, Fast Track Court-I, Magisterial Level, Coimbatore, dated 03.11.2016.

For Petitioner : Mr.B.Nedunchezhiyan

O R D E R

The revision petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the revision petitioner under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instrument Act, before the learned Judicial Magistrate, Fast Track Court-I, Coimbatore and the same was taken on file in C.C.No.335 of 2013. After trial, the Magistrate found the accused guilty of the offence under Section 138 of Negotiable Instruments Act and convicted the accused and sentenced him to undergo simple imprisonment for the period of one year to pay a compensation of Rs.5,00,000/-, within a period of two months from the date of this judgment, in default, sentenced to undergo simple imprisonment for the period of two months. As against the same the petitioner preferred an appeal before the learned Principal Sessions Judge, Coimbatore and the same was taken on file in C.A.No.160 of 2016 and made over to the learned IV Additional District and Sessions Judge. The learned Additional Sessions Judge, after hearing the arguments on both sides, dismissed the appeal and confirmed the judgment of the learned Magistrate in C.C.No.335 of 2013 dated 03.11.2016 and modified the sentence to the extent that, the accused shall undergo simple imprisonment

for six months and pay compensation of Rs.5,00,000/- within a period of two months, in default, the accused shall undergo two month simple imprisonment.

2. Challenging the said judgment dated 06.10.2016 in C.A.No.160 of 2016, the revision petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the respondent has not proved his case and during the cross examination, the respondent has admitted that he has given cash to the petitioner from case in hand. Later, he deposed that he has withdrawn the said amount from the bank and given the same to the petitioner. Absolutely there was no material to show that the petitioner has borrowed a sum of Rs.5,00,000/- The learned counsel for the petitioner would further submit that the petitioner has borrowed only a sum of Rs.1,80,000/- in the presence of Mr.Anandasekar/DW1. Subsequently, he repaid Rs.1,00,000/- and the balance of Rs.80,000/- only has to be paid. The Appellate Court, has failed to consider the legal proposition and dismissed the appeal by modified the sentence which warrants interference of this Court.

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

5. The case of the respondent is that the respondent/complainant is known the revision petitioner herein. On 16.05.2012, the petitioner borrowed a sum of Rs.5,00,000/- to meet out his urgent needs from the respondent. The petitioner has not paid the interest as promised by him. When the respondent demanded him to repay the said amount, the accused has issued a posted dated cheque in favour of the respondent/complainant for a sum of Rs.5,00,000/- dated 20.06.2013, bearing cheque No.667310, drawn on ICICI Bank, Coimbatore Branch. The accused assured to pay the actual interest after the encashment of the said cheque. When the respondent presented the cheque for encashment, the same was returned on the same day with an endorsement as funds insufficient. The respondent has received a memo from the Bank on 02.03.2013. Therefore, the respondent issued a statutory notice dated 15.03.2013 to the petitioner through his Advocate and the same was received by the petitioner on 21.03.2013. After receipt of the notice, the petitioner has sent a reply on 21.03.2013 with false allegation.

6. Thereafter, the respondent has filed a private complaint before the learned Judicial Magistrate, FTC-I, Coimbatore in C.C.No.335 of 2013. Before the learned Magistrate, during trial, in order to prove the case of the respondent, the

respondent has examined himself as P.W.1 and the cheque and other correspondences were marked as Exs.P1 to P6. On the side of the defence, the petitioner has examined himself as D.W.1. The learned Magistrate, after considering the oral and documentary evidence, came to the conclusion that the petitioner has admitted the execution of the cheque and also the respondent proved his initial burden. Therefore, he has drawn the statutory presumption under Section 139 of NI Act and the revision petitioner has not rebutted the presumption. The learned Magistrate found the petitioner guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him as mentioned above.

7. Challenging the same, the petitioner has preferred an appeal in C.A.No.160 of 2013. After hearing both sides, the learned Sessions Judge dismissed the appeal and modified sentence imposed by the learned Judicial Magistrate. Challenging the order passed by the learned Sessions Judge in C.A.No. 160 of 2013 dated 06.10.2018, the petitioner has filed the present revision before this Court.

8. 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 re-assess the entire evidence. Both the Courts have elaborately appreciated the evidence and come to the conclusion that the revision petitioner committed the offence under Section 138 of Negotiable Instruments Act. While deciding the case, this Court has to see as to whether there is any perversity in appreciation of evidence by both the Courts below.

9. On reading of the materials, it is seen that the revision petitioner has not disputed the relationship of the parties and also not disputed the execution of the cheque and not denied the signature found in the cheque. Once the execution and signature of the cheque is admitted, the Court can draw a statutory presumption under Section 139 of NI Act. No doubt, the said presumption is a rebuttable presumption. It is for the accused to rebut the presumption in the manner known to law. 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 otherwise through cross examination of the witnesses. In this case, the revision petitioner has examined one person as D.W.1. In his evidence, D.W.1 has stated that he had gone to the office of the petitioner and the petitioner informed that he had taken a loan of Rs.2,00,000/- from the respondent. But he has not stated the date and other particulars. Both the Courts have considered the evidence of the defence and found the revision petitioner has not rebutted the statutory presumption in the manner known to

law. Without any valid material, mere bald defence is not sufficient to rebut the presumption.

10. Under these circumstances, this Court does not find any perversity in the judgment passed by the learned Appellate Judge and there is no merit in the revision and no reason to interfere with the order passed by both the Courts below.

11. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(JJ Act)

//True copy//

Sub Assistant Registrar

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To

1.The IV Additional District and Sessions Judge, Coimbatore.

2.The Judicial Magistrate, FTC-I, Coimbatore.

3. The Section Officer, Criminal Section,
High Court, Madras

+lcc to Mr.B.Nedunchezhiyan, Advocate SR.No.39743

Crl.R.C.No.384 of 2019 and
Crl.M.P.Nos.5640 and 5641 of 2019

AK(CO)
GMY(28/01/2020)

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