

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1352 of 2017

1. T.Jitendra
2. T.Mahaveer Marlecha ...Petitioners

Vs.

V.Gangadaran ... Respondent

Prayer:

The Criminal Revision filed under Section 397 and 401 of Code of Criminal Procedure to call for the records pertaining to judgment dated 04.10.2017 passed in Criminal Appeal No.84 of 2017 by the learned Principal Sessions Judge, Chennai, confirmed the judgment dated 10.03.2017 in C.C.No.7357 of 2014 passed by the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai and set aside the same.

For Petitioners : Mr.C.Prabhakaran for
M/s.S.Viswagandhi

For Respondent : Mr.B.S.Jothiraman

ORDER

This criminal revision has been filed against the judgment dated 04.10.2017, passed in Criminal Appeal No.84 of 2017 by the Principal Sessions Judge, Chennai, confirming the judgment dated 10.03.2017 in C.C.No.7357 of 2014 passed by the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai.

2. The petitioners are accused and the respondent is the complainant. The respondent complainant had filed a private complaint under Section 200 Cr.P.C against the petitioners for the offence under Section 138 of Negotiable Instruments Act before the learned Metropolitan Magistrate, FTC-II, Egmore, Chennai, which was taken up on file in C.C.No.7357 of 2014. The learned Magistrate after completing the trial, found the petitioners guilty for the offence under Section 138 of Negotiable Instruments Act and hence by judgment dated 10.03.2017, convicted and sentenced them to undergo one year simple imprisonment and A1 was directed to pay Rs.4.00 lakhs as

compensation to the complainant and A2 was directed to pay Rs.6.00 lakhs as compensation to the complainant, in default, both of them shall undergo simple imprisonment for a further period of three months.

3. Aggrieved against the above said order, the petitioners/accused filed an appeal before the learned Principal Sessions Judge, Chennai, in Crl.A.No.84 of 2017. After hearing both sides, the learned Principal Sessions Judge by judgment dated 04.10.2017, dismissed the appeal by confirming the conviction and sentence made by the trial Court, against which, the petitioners have preferred the present revision case before this Court.

4. The case of the complainant is that the revision petitioners/accused had borrowed a sum of Rs.2,00,000/- on 17.02.2010 and executed a promissory note and thereafter, they have not paid the interest and both the accused had paid interest only up to 17.05.2010 and they made an endorsement on the backside of the promissory note. On 07.02.2013, both the petitioners/accused paid a sum of Rs.1000/- and the first petitioner had made an endorsement to that effect. After the first borrowal, both the accused had borrowed again a sum of Rs.3,00,000/- on 27.06.2011 by promising to repay the same with 18% interest per annum for which they executed a promissory note on the same day and they have been marked as Ex.P1 and P2. Both the accused had paid interest for three months on 27.09.2011. On 07.02.2013, both the accused had paid a sum of Rs.1000/- and the second petitioner had made an endorsement at the back side of the promissory note to settle the entire debt by 31.05.2013. Towards repayment of the above said debt, the first petitioner issued a cheque bearing No.001225 for a sum of Rs.2.00 lakhs, dated 19.02.2014 drawn at City Union Bank Ltd., Triplicane, Chennai-5 and the second petitioner had issued a cheque bearing No.001419 for a sum of Rs.3.00 lakhs, dated 19.02.2014 drawn at City Union Bank Ltd., Triplicane, Chennai. Thereafter, when the respondent/complainant presented the cheques, the said cheques were returned on 19.03.2014 with an endorsement "funds insufficient". Therefore, the respondent/complainant issued a statutory notice on 30.03.2014. But, the petitioners/accused, neither sent any reply nor paid the amount. Therefore, the respondent/complainant filed a private complaint before the Magistrate. The Magistrate in Court below found that the accused have committed the offence under Section 138 of Negotiable Instruments Act and hence, passed the judgment of conviction and sentence and the same was confirmed by the Principal Session Judge, Chennai.

5. The learned Counsel for the petitioners would submit that the accusation of the respondent is not proved and they have not borrowed the money and they have not issued any cheques. Though, both the facts were different, it was alleged that the first petitioner borrowed money from the complainant on 17.02.2010 and the second petitioner borrowed money from the complainant on 27.06.2011. Both the petitioners executed promissory notes on different dates. The first petitioner executed the promissory note on 17.02.2010 and second petitioner executed the promissory note on 27.06.2011. Both the petitioners have given cheques in different accounts as both the petitioners are not joint account holders and statutory notices were issued to the petitioners separately. In the year 2010, loan was given to the petitioners by the respondent/complainant. Whenever, loan was borrowed from the respondent/complainant, first petitioner had given promissory note and a post dated cheque. Likewise, for this loan also the first petitioner had given promissory note and a post dated cheque to the complainant. It was admitted by the respondent/complainant that the cheques were received from the accused with future date. The loan was borrowed in the year 2010 and the cheques were issued in the year 2014 and it is barred by limitation and also these cheques were not issued for legally enforceable debt. Both the Courts below have failed to consider the above facts and convicted the petitioners, which warrants interference of this Court.

6. The learned counsel appearing for the respondent/complainant would submit that the petitioners had borrowed a sum of Rs.2.00 lakhs in the year 2010 and subsequently Rs.3.00 lakhs in the year 2011 and executed two promissory notes on the date of borrowal of the above said amounts, thereby agreeing to repay with an interest of 18% p.a. Thereafter, the accused had paid interest for some period and committed default in payment of interest. On demand, the first petitioner/A1 had issued a cheque bearing No.001225 dated 19.02.2014 for a sum of Rs.2.00 and the second petitioner/A2 had issued a cheque bearing No.001419 dated 19.02.2014 for a sum of Rs.3.00 lakhs. When the respondent/complainant presented both the cheques for encashment, the same were returned on 19.03.2014 as "funds insufficient". Hence the respondent/complainant issued a legal notice, for which the petitioners/accused neither sent any reply nor repaid the amount. Therefore the respondent/complainant filed a private complaint. The trial Court after considering all the materials placed on record and the arguments advanced on either side had rightly come to the conclusion that the petitioners found guilty for offence under Section 138 of Negotiable Instruments Act and the lower appellate Court also confirmed the conviction and sentence recorded by the trial Court.

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

8. The petitioner filed this revision against the concurrent judgment of conviction made by both the Courts below. The petitioners/accused admitted their signature and execution of cheques. Under these circumstances, presumption under Section 118 and 139 of Negotiable Instruments Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioners need not come into witness box and produce a strong piece of proof to rebut the presumption, they can rebut the presumption through preponderance of probability or through cross examining the witnesses. The main contention of the petitioners is that the cheques were issued towards only security purpose and not for any legally enforceable debt and the cheques were time barred, for which the petitioners had not produced any proof and they only stated that the cheques were issued as security for some chit transaction with the respondent/complainant. Even though, the petitioners/accused had made an attempt to rebut the presumption, they have not filed any document to show that the cheques were misused by the complainant, for the time barred debt and also barred by limitation. In this case, on reading of the entire materials placed on record, it reveals that the petitioners/accused have failed to rebut the presumption drawn in favour of the respondent/complainant. 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.

9. It is pertinent to refer the judgment of the Hon'ble Supreme Court in the case of State of Kerala Vs. Putthumana Illath Jathavedan Namboodri, reported in AIR 1999 SC 981 held as follows:

"... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an Appellate Court nor can it be treated even as a second Appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has

already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice..."

In the case on hand also the respondent has established his case where as the petitioners here in have not rebutted the statutory presumption and this Court does not find any perversity. Therefore, there is no reason to interfere with the judgment of lower appellate Court.

10. Accordingly, the criminal revision petition is dismissed. The trial Court is directed to secure the custody of the petitioners/accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ksa-2

To

1. The Metropolitan Magistrate, FTC-II, Egmore, Chennai.
2. The Principal Sessions Judge, Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras-104

+1cc to Mr.B.S.Jothiraman, Advocate, S.R.No.26104
+1cc to M/s.S.Viswagandhi, Advocate, S.R.No.26053

Cr1.R.C.No.1352 of 2017

SSV(CO)
CS/08/07/2019