

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.1395 of 2018

and

CrI.M.P.No.16228 of 2018

Udayakumar

.. Petitioner/ Appellant /Sole Accused
Vs.

Vageesan

.. Respondent/ Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C., against the order dated 20.06.2017 passed in C.A.No.19 of 2015 on the file of the I Additional District and Sessions Court, Cuddalore, thereby, partly allowed the order dated 03.03.2015 passed in C.C.No.195 of 2013 on the file of the Judicial Magistrate No.1, Cuddalore.

For Petitioner : Mr.V.Balamurugane

For Respondent : Mr.G.Pugazhendhi

O R D E R

This Criminal Revision has been filed to set aside the order dated 20.06.2017 passed in C.A.No.19 of 2015 on the file of the I Additional District and Sessions Court, Cuddalore, thereby, partly allowed the order dated 03.03.2015 passed in C.C.No.195 of 2013 on the file of the Judicial Magistrate No.1, Cuddalore.

2. The respondent is the complainant and the petitioner is the accused. The respondent/complainant filed a private complaint before the learned Judicial Magistrate No.1, Cuddalore against the petitioner/accused for the offence under section 138 of Negotiable Instruments Act. The learned Magistrate taken the complaint on file in C.C.No.195 of 2013.

3. In order to prove the complaint, the respondent/complainant was examined himself as PW-1 and marked 5 documents viz., Ex.P1-cheque bearing no.567073, Ex.P2-return memo, Ex.P3-Statutory notice sent by the respondent/complainant to the accused, Ex.P4- Acknowledgement and Ex.P5-reply notice. On the side of defence, the Bank Manager was examined as DW-1 and no documents were marked. After the trial, the learned Magistrate, found that the accused found guilty for the offence under section 138 of Negotiable Instruments Act and sentenced him to undergo Three months Simple Imprisonment and to pay fine of Rs.1,000/-, in

default, 15 days Simple Imprisonment. Against the judgment of conviction, the accused preferred the criminal Appeal in CrI.A.No.19 of 2015 before the learned Principal District and Sessions Judge, Cuddalore. After hearing the arguments, the learned I Additional Sessions Judge, Cuddalore, partly allowed the appeal filed by the accused by confirming the conviction and set aside the sentence instead of 3 months simple imprisonment, to pay fine of Rs.1,50,000/-. There against, the accused is before this Court, by way of the present revision.

4. The learned counsel appearing for the revision petitioner would submit that the respondent has not proved its case. The revision petitioner/accused has not borrowed any loan from the respondent/complainant and as stated in the reply notice, the cheque was not issued in the personal capacity and it was issued only in the name of the organizer. The learned counsel further stated that the cheque was stolen by the respondent without the petitioner's knowledge. This fact was not considered by both the Courts below, which warrants interference.

5. The learned counsel appearing for the respondent would submit that the petitioner has borrowed a sum of Rs.1,50,000/- and issued cheque for the repayment of the said amount. The petitioner/accused has not filed any documents to prove the denial of the issuance of the cheque. The signature found in the cheque was also admitted. The petitioner/accused has not rebutted the presumption. Hence, there is no reason to interfere with the judgments of the Courts below.

6. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent as also perused the materials on record.

7. On 20.02.2013, the petitioner/accused is alleged to have borrowed a sum of Rs.1,50,000/- from the respondent/complainant and issued a cheque bearing No.567073 dated 20.05.2013 for the repayment of the said amount. Upon presentation, the same was returned as "Account Closed" on 06.07.2013. The respondent/complainant issued a legal notice on 10.07.2013 requesting the petitioner/accused to repay the cheque amount. The notice was received by the accused on 15.07.2013 and issued reply on 18.07.2013 but he did not repay the amount. Hence, the petitioner preferred the complaint. Though the revision petitioner/accused sent a reply, he has not filed any document to support his case. The execution of cheque is admitted and the signature is also not in dispute. The only defence is that the cheque was taken away by the respondent/complainant without his knowledge and the cheque was not issued to any personal capacity. When he came to know that the respondent/complainant has taken the cheque, he has not given any complaint about the missing cheque. Therefore, the respondent/complainant has filed the private complaint and to prove his complaint, he has filed the cheque and signature

found in the cheque is not in dispute. There is a statutory presumption that the cheque is issued for legally enforceable debt by the signatory. It is for the signatory of the cheque to rebut the presumption. No doubt this presumption has to be rebutted by the petitioner in the manner known to law. It is for the accused to rebut the presumption in the manner known to law. Mere denial is not sufficient, though the accused need not come into witness box and prove his defence or rebut the presumption by direct evidence. He can establish his defence and rebut the presumption even through the preponderance of probability even otherwise by way of cross examination. On reading of the entire materials though he has taken the defence in the reply notice that the cheque was taken away from his custody without his knowledge. Admittedly, he has not taken any steps to find out the cheque and also he has not preferred any complaint.

8. In the circumstances, this Court finds that the revision petitioner/accused has not rebutted the presumption in the manner known to law. Both the Courts below given the finding that the revision petitioner/accused committed offence under Section 138 of Negotiable Instruments Act. The Appellate Court is also the fact finding Court, re-appreciated the entire evidence and gave the independent conclusion that the revision petitioner has committed the offence. This Court, as a Revisional Court exercising revisional jurisdiction, cannot re-appreciate the entire evidence. This Court does not find any perversity in the findings of the Courts below in appreciating the evidence.

9. This Criminal Revision Case shall stand dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

kmi

To

1.The Judicial Magistrate No.1,
Cuddalore.

2.The I Additional District and Sessions Judge,
Cuddalore.

+1cc to Mr.V.Balamurugane , Advocate SR.No. 26078

+1cc to Mr.G.Pugazhendhi , Advocate SR.No. 26232

Cr1.R.C.No.1395 of 2018

A.SK(26/12/2019)