

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.Rc.No.1360 of 2018
and
Crl.M.P.No.15834 of 2018

K.B.Samuvel

... Petitioner

Vs

Guruvayurappan Chit Finance (P) Ltd,
Rep by Power Agent N.Sivadoss,
No.10/11, Umpherson Street,
2nd Street, Chennai - 600 001.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, to call for the records in respect of the Impugned order on the file of Learned XVII Additional City Civil Court at Chennai and set aside the same and confirming the order in C.C.No.2553 of 13 on the file of Metropolitan Magistrate FTC IV G.Town, Chennai.

For Petitioner :NA

For Respondent : Mr.N.Baskaran

O R D E R

The petition has been filed by the petitioner to call for the records in respect of the impugned order on the file of the learned XVII Additional City Civil Court at Chennai and to set aside the same and confirming the order in C.C.No.2553 of 2013 on the file of the learned M.M.G.T.FTC, Chennai.

2. The respondent has filed a private complaint under Section 200 Cr.P.C. against the revision petitioner before the learned Metropolitan Magistrate Court, Chennai for offence under Section 138 of Negotiable Instruments Act and the same was taken on file in C.C.No.2553 of 2013. After enquiry, the learned Magistrate has found the petitioner/accused guilty for offence under Section 138 of NI Act and convicted him and sentenced him

to undergo six months simple imprisonment and to pay a compensation of Rs.3,23,000/- to the complainant/respondent within one month from the date of the judgment. As against the said order, the revision petitioner has filed an appeal before the learned XVII Additional City Civil Court, Chennai and the same was dismissed, confirming the conviction and sentence passed by the learned Magistrate. Challenging the order of the learned XVII Additional City Civil Judge, the accused/petitioner has filed the present revision before this Court.

3. The case of the respondent is that the revision petitioner/accused had subscribed with the respondent complainant/complainant vide Group No.GPZ 34 of 13 for a sale value of Rs.5,00,000/- (Rupees Five Lakhs Only) and withdrawn the chit prized amount. Subsequently, the revision petitioner had committed default in paying the subscription and had become chronic defaulter. After his due payment of subscription, the revision petitioner had issued a cheque bearing No.373971, dated 25.04.2013 for a sum of Rs.3,23,800/- (Two Lakhs Twenty Three thousand and Eight Hundred only) drawn on Indian Overseas Bank in favour of the respondent herein.

4. As per the instructions of the revision petitioner, the respondent presented the cheque on 25.04.2013 in his bank Viz., the Bank of India, Chennai Main Branch. The said cheque was returned on 26.04.2013 with an endorsement as "funds insufficient" and the same was intimated to the petitioner/accused on 29.04.2013 by his banker. The respondent had sent a statutory notice dated 10.05.2013 to the revision petitioner, calling upon him to repay the amount due and the said notice was received by the revision petitioner on 11.05.2013. Despite the receipt of the notice, she had neither repaid the amount nor sent any reply. Therefore, the respondent invoked section 138 of Negotiable Instruments Act. Subsequently, the respondent filed a private complaint before the learned Metropolitan Magistrate Court, Chennai for the offence under Section 138 of NI Act. From the oral and documentary evidence, the trial Court found the revision petitioner guilty for the offence under section 138 of Negotiable Instruments Act. The appellate Court also being the fact finding Court had found that there are no grounds made out to set aside the judgment of the trial Court. Therefore, the appeal was dismissed and the order of Magistrate was confirmed.

5. This Court being a revisionary Court, while exercising the revisionary jurisdiction, the scope of revision is very limited. While deciding a revision, this Court has to see as to whether there is any perversity in appreciating the evidence by the Courts below. On a reading of the entire materials, it is seen that the revision petitioner has admitted the execution of

the cheque and she has not denied the signature found it. Therefore, as per the provisions under Sections 118 and 139 of Negotiable Instruments Act, the statutory presumption is that once she has admitted the execution of the cheque, it is the burden of the accused to rebut the statutory presumption in the manner known to law. It is very clear that there was no defence on record to rebut the presumption. On a reading of the entire facts, the respondent/ complaint has proved his case that for the repayment of the arrears of subscription in chit amount, cheque was issued by the accused. He has admitted the execution of the cheque and the signature found in it. Therefore, it is for him to rebut the presumption in the manner known to law that he has repaid the entire subscription to the chit fund. On a reading of the entire materials, this Court does not find any perversity in the judgment passed by both the Courts below. Under these circumstances, there is no merit in the revision and this Court does not find any reason to take a different view.

6. In the result, the revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XVII Additional Judge,
City Civil Court, Chennai.
2. The Metropolitan Magistrate,
FTC IV, George Town,
Chennai.

+1cc to Mr.S.R.Mani, Advocate Sr.15779
+1cc to Mr.N.Baaskaran, Advocate Sr.14985

CrI.RC.No.1360 of 2018
and
CrI.M.P.No.15834 of 2018

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srg 12/06/2019