

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1366 of 2018
and
Crl.M.P.No.15855 of 2018

Harish Kumar

.. Petitioner

Vs

Sunil

.. Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to set aside the judgment dated 03.09.2018 in C.A.No.130 of 2018 on the file of the XVIII Additional Sessions Judge, Chennai confirming the judgment dated 06.10.2015 passed in C.C.No.260 of 2015 on the file of the Metropolitan Magistrate IV Fast Track Court at George Town, Chennai.

For Petitioner : Mr.Gupta and Ravi

For Respondent : No Appearance

O R D E R

The revision petitioner has come forward with this criminal revision case to set aside the judgment dated 03.09.2018 in C.A.No.130 of 2018 on the file of the XVIII Additional Sessions Judge, Chennai, confirming the judgment dated 06.10.2015 passed in C.C.No.260 of 2015 on the file of the Metropolitan Magistrate IV Fast Track Court at George Town, Chennai.

2.The revision petitioner has filed C.C.No.260 of 2015 before the trial Court under Section 200 of Code of Criminal

Procedure to punish the respondent herein for having committed an offence under Section 138 of The Negotiable Instruments Act. According to the revision petitioner, on the basis of the orders placed by the respondent he has supplied and delivered M.S.Plate Scrap vide invoice Nos.1907, 1909 & 1911 dated 20.06.2013 and 21.06.2013 for a total value of Rs.21,50,820/-. For discharge of the debt, the accused/respondent herein issued a cheque dated 09.12.2014 for Rs.18,79,151/- drawn at Union Bank of India, Washermanpet, Chennai - 21 in favour of the petitioner. When the cheque was presented for collection, it was returned by the bankers with an endorsement "Funds Insufficient". Hence, the revision petitioner issued a statutory notice on 16.12.2014 to the respondent, calling upon him to pay the cheque amount. As the respondent, even after the receipt of the statutory notice, did not re-pay the cheque amount, the petitioner has filed the private complaint. After filing of the private complaint, the respondent herein sent a reply notice dated 04.03.2015, repudiating the averments contained in the statutory notice.

3. According to the respondent, he is liable to pay only a sum of Rs.1,36,412/- to the revision petitioner and not the amount as claimed in the private complaint. It is also stated that before effecting supply of the goods, the revision petitioner obtained three blank cheques and also a Letterhead signed by the respondent and one of the above cheques has been misused to file the present complaint.

4. Before the trial Court on behalf of the complainant he examined himself as P.W.1 and marked 5 documents as Ex.P1 to P5. On the side of the respondent no one was examined. However, he has marked the acknowledgement card for having received the reply notice by the revision petitioner, as Ex.R1.

5. On a perusal of the oral and documentary evidence, the trial Court concluded that a sum of Rs.18,66,000/- was payable by the respondent and it was also paid on 20.06.2013 and 21.06.2013. The said payments were accepted by the complainant under Ex.P1. In such event, the averment of the petitioner that a sum of Rs.18,79,151/- is payable by the respondent is baseless, when the amount already paid by the respondent is deducted and the respondent is liable to pay only a sum of Rs.2,84,820/-, the complainant failed to mention the exact amount payable by the respondent in his complaint. Even otherwise the complainant himself has admitted the receipt of the amount from the respondent. Thus, the trial Court concluded that even before institution of the private complaint, the

accused has paid Rs.18,66,000/- vide cheque dated 09.12.2014. The trial Court also concluded that the revision petitioner has filled the blank cheque given by the respondent to file the present complaint. It was also concluded that mere failure on the part of the respondent to issue a reply notice to the statutory notice sent by the revision petitioner will not amount to accepting the claim made by the revision petitioner. The fact remains that after institution of the present private complaint, the respondent through his Advocate has sent a reply notice on 06.03.2015 repudiating the averments in the statutory notice.

6. Aggrieved by the order of acquittal passed by the trial Court, the revision petitioner preferred criminal appeal No.130 of 2018. The appellate Court accepted the findings rendered by the trial Court to acquit the respondent and dismissed the appeal on 03.09.2018. Aggrieved by the same, the present criminal revision case is filed.

7. Heard the counsel for both sides and perused the materials available on record.

8. Admittedly, there is a business transaction between the petitioner and the respondent. The revision petitioner supplied M.S. Plate Scrap to the respondent on credit basis before and effected supply of the goods. The respondent has issued three blank cheques in favour of the petitioner. It is also seen from Ex.P1 that even prior to the institution of the present private complaint, the respondent has paid a sum of Rs.18,66,000/- by way of cheque, towards part of the cost of goods supplied by the revision petitioner. This was rightly pointed out by both the Court below to arrive at the conclusion that the cheque issued by the respondent has been misused by the revision petitioner. Further, the revision petitioner has not proved by acceptable evidence that the respondent is liable to pay the cheque amount. Even otherwise in exercise of the revisionary jurisdiction under Sections 397 and 401 of Criminal Procedure Code, this Court cannot simply interfere with the order of acquittal recorded by the Court below, unless there are strong materials to interfere with the order of acquittal. Even otherwise, if there are two views are possible, the view one which is favourable to the accused has to be extended. Though signature is admitted and there is a statutory presumption but the said presumption is only rebuttable presumption. Even the presumption can be rebutted by preponderance of probabilities. In this case, the respondent has rebutted the presumption. Having regard to the above, this Court is of the considered view

that the Courts below have rightly appreciated the material evidence available on record and acquitted the respondent herein. This Court does not find any reason to interfere with the same. Accordingly, the criminal revision case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

AT

To

- 1.The XVIII Additional Sessions Judge, City Civil Court,
Chennai
- 2.The Metropolitan Magistrate IV Fast Track Court,
George Town, Chennai.
- 3.do thro Chief Metropolitan Magistrate,
Chennai.

+1cc to M/s.K.S.Ganesh Babu, Advocate sr.12558
+1cc to Mr.Gupta and Ravi, Advocate sr.12387

Crl.R.C.No.1366 of 2018
and Crl.M.P.No.15855 of 2018

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nr 04/07/2019

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