

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1356 of 2018

E.Thangaraj

... Petitioner

vs.

Gajaganapathy

... Respondent

The Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C, to call for records pertaining to judgment in Crl.A.No.401 of 2017 dated 05.09.2018 on the file of the Principal Sessions Judge, Chennai, confirming the judgment in C.C.No.3902 of 2013 dated 11.10.2017 on the file of the III Metropolitan Magistrate, George Town, Chennai, and set aside the same and convict the respondent/accused with appropriate punishment and order to pay the cheques amount as compensation.

For Petitioner : Mr.M.Anandaraaj

For respondent : Mr.Ramesh Kumar Chopra

ORDER

The criminal revision has been filed against the concurrent judgment of acquittal made by the Courts below for the offence under Section 138 of Negotiable Instruments Act (in short 'NI Act').

2 The petitioner is complainant and respondent is accused. The petitioner filed a private complaint under Section 200 of Cr.P.C. against the respondent for the offence under Section 138 of NI Act, which was taken on file in C.C.No.3902 of 2013 by the learned III Metropolitan Magistrate, George Town, Chennai. The learned Magistrate, after trial, found the petitioner/accused not guilty for the offence under Section 138 of NI Act and hence by judgment dated 11.10.2017, acquitted the respondent/accused. Aggrieved against the same, the petitioner has preferred an appeal in C.A.No.401 of 2017 before the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge, after hearing the argument advanced on either side, by judgment dated 05.09.2018, dismissed the appeal and

confirmed the judgment of acquittal made by the trial Court, against which, present revision has been filed by the complainant.

3 According to learned counsel for petitioner/complainant the respondent/accused had borrowed a sum of Rs.15,00,000/- in the month of February 2013 for his urgent needs, and to discharge the same, after several demands, issued two cheques dated 15.05.2013, for a sum of Rs.8,00,000/- and Rs.7,00,000/- respectively. The respondent/complaint presented the cheque for encashment, the same was returned as "funds insufficient". Hence the respondent/complainant issued a legal notice, for which the petitioner/accused has sent a reply containing false statements and not repaid the amount and therefore the respondent has filed a private complaint. The respondent/accused admitted the signature and execution of cheques and therefore, presumption under Section 118 and 139 would come into play. Further, the respondent/accused had given contrary statement and after receipt of notice, he filed a suit against Jeyakumar to whom the cheque was given according to the respondent/accused. Both the trial Court as well as the lower appellate Court had failed to consider the above facts and acquitted the accused, shifting the burden on the complainant, which warrants interference.

4 According to learned counsel for the respondent/accused, the respondent did not borrow any amount from the petitioner and not issued the subject cheques to the petitioner, in fact, he issued the subject cheques to one Jeyakumar. There was a dispute between the respondent and the said Jeyakumar and he set up this petitioner to file this case by using the cheques, which were given to him towards security. The petitioner/complainant had not stated any specific date on which the alleged borrowal has taken place. In the complaint, he stated that the amount was given at once, whereas, during the course of examination, he has stated that he lent money in 9 instalments. If, the petitioner lent money in 9 instalments, he would have obtained 9 cheques from the respondent. In support of his contentions, the learned counsel relied on various decisions rendered by this Court as well as the Hon'ble Supreme Court. The petitioner/complainant has stated that he used to note all the money transactions in Diary, which has not been produced before the Court. The petitioner/complainant has also failed to prove his lending capacity. Both the Courts below had rightly appreciated the evidence and acquitted the respondent, which does not call for any interference.

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

6 It is an admitted fact that the petitioner/complainant did not produce the Dairy in which, he used to note all money transactions. Even though, the respondent admitted his signature and presumption will take place, in this case, the petitioner/complainant has failed to prove his initial burden by producing vital documents, which are necessary to substantiate his claim. Even the petitioner has not stated any specific date on which he lent money to the respondent. In a case under 138 Act, the initial burden would lie on the complainant and he has to prove the same thereafter only the statutory presumption would arise. It is settled proposition of law that the presumption under Section 118 and 139 of NI Act is rebuttable presumption and to rebut the same the accused need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or probable defence, even by cross examining the witnesses. Assuming that the petitioner/complainant has proved his initial burden and respondent/accused has to rebut the presumption in the manner known to law, on reading of the entire evidence, it is clear that the respondent/accused has rightly rebutted the presumption, in examination of the complainant, in which, the petitioner/ complainant taken a contrary statement, which will affect his very claim. The lower appellate Court, as a final Court of fact finding, has independently re-appreciated entire evidence and confirmed the judgment of acquittal made by the trial Court, in which this Court does not find any perversity. No compelled circumstances have been established to take a different view in the case of revision against judgment of acquittal. There is no merit and substance in the criminal revision case and the same is dismissed.

7 In the result, the criminal revision case is dismissed. The judgment of acquittal made by both the Courts below is hereby confirmed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The III Metropolitan Magistrate,
George Town, Chennai.
- 2.-Do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Principal Sessions Judge,
Chennai

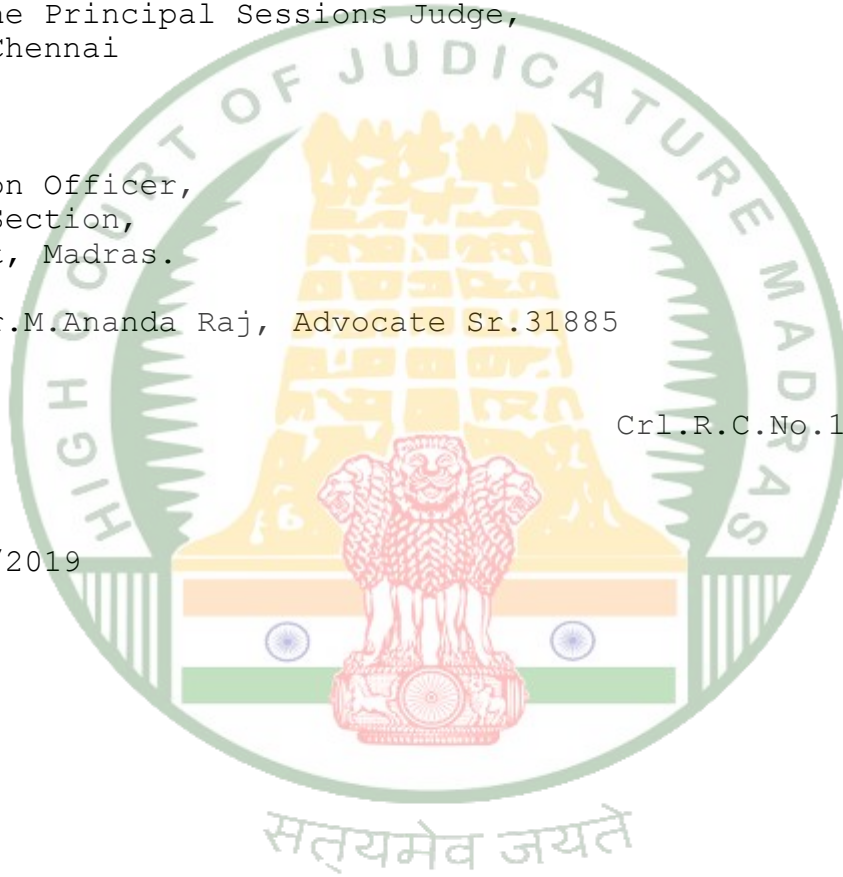
Copy to

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

+2cc to Mr.M.Ananda Raj, Advocate Sr.31885

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srg 28/09/2019



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