

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1389 of 2018 and
Crl.M.P.Nos.16151 & 16153 of 2018

Sri.A.P.Maheswara ... Petitioner/Accused
Vs

M/s.Leona Worldwide Logistics
Custom House Agent, Partnership Firm,
Old No.12, New No.25, First Floor,
Angappan Naicken Street, Rep. By its
Alleged Power of Attorney Holder,
Sri.Peter Fernandes. Respondent/Complainant

PRAYER: Criminal Revision Case filed under Article 397 r/w
401 of Criminal Procedure Code to call for the records in
C.A.No.388 of 2017, dated 27.08.2018, on the file of the
learned XVIII Additional Sessions Court, Chennai, and
confirming the judgment passed in C.C.No.2426 of 2016,
dated 10.11.2017, on the file of the learned Metropolitan
Magistrate, Fast Track Court No.IV, George Town, Chennai.

For Petitioner : Mr.D.Saravanan
For Respondent : Mr.S.Thamilarasi

O R D E R

The Criminal revision has been filed against the
judgment in C.A.No.388 of 2017, dated 27.08.2018, on the
file of the learned XVIII Additional Sessions Court,
Chennai, and by confirming the judgment passed in
C.C.No.2426 of 2016, dated 10.11.2017, on the file of the
learned Metropolitan Magistrate, Fast Track Court No.IV,
George Town, Chennai.

2. The petitioner is the accused and respondent is the
complainant. The respondent has filed a private complaint
under Section 200 of Cr.P.C. against the petitioner for the
offence under Section 138 of Negotiable Instruments Act,
before the learned Metropolitan Magistrate, Fast Track
Court No.IV, George Town, Chennai, which was taken on file

in C.C.No.2426 of 2016. The learned Metropolitan Magistrate, after trial, found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment dated 10.11.2017, convicted and sentenced him to undergo 6 months simple imprisonment and to pay a fine of Rs.2,23,786/- towards compensation, in default, to undergo simple imprisonment for further period of two months. Aggrieved against the said judgment, the petitioner has preferred an appeal before the Sessions Court, Chennai. The learned XVIII Additional Sessions Judge, after hearing both the parties, by judgment dated 27.08.2018, dismissed the appeal and confirmed the conviction and sentence recorded by the trial Court, against which, the petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that there was a money transactions between the petitioner and the respondent. The complainant is a Customs House Agent having valid licence. The accused is exporting Cargo products. The petitioner/accused has issued a cheque bearing No. 463602 dated 19.04.2016 to the respondent drawn on the Syndicate Bank, K.K.Nagar Branch for the value of invoice for a sum of Rs.2,23,786/-. The cheques in disputes were not issued to the respondent for discharging legally enforceable debt or liability. The respondent has misused the cheques which was only given as security. The petitioner was convicted only based on the presumption and hence the judgment of the first Appellate Court is liable to be set aside.

4. The learned counsel appearing for the respondent would submit that the petitioner has sent the goods to the shipment and for the alleged liability, the petitioner/accused issued a cheque for a sum of Rs.2,23,786/- for the purpose of security. When the respondent presented the cheque for encasement, the same was returned as "funds insufficient". Hence the respondent/complainant issued a legal notice, for which the petitioner/accused neither repaid the amount nor sent any reply notice. Thereafter, the respondent/complainant had filed a private complainant. The petitioner has not disputed the transaction between the parties. 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 petitioner found guilty for the offence under Section 138 of NI Act and the lower appellate Court also confirmed the conviction recorded by the Trial Court.

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

6. The petitioner filed this revision against the concurrent judgment of conviction made by the both the Courts below. The petitioner/accused admitted his signature and execution of the cheque. On a reading of the entire materials, it is seen that the revision petitioner has admitted the execution of the cheque and he has not denied the signature found in the cheque. The petitioner has not disputed the business transaction between the petitioner and the respondent. Therefore, as per the Sections 118 and 139 of Negotiable Instruments Act, the statutory presumption is that once he has admitted the execution of the cheque, it is the burden of the respondent to rebut the statutory presumption in the manner known to law. Under these circumstances, there is no merit in the revision and there is no valid ground made out to interfere with the order passed by both the Courts below.

7. This court while exercising revisional jurisdiction cannot re appreciate the entire evidence as appellate Court and substitute its own view especially when there is no perversity in deciding the case. In this regard it is pertinent to refer to the decision of the Apex Court in the case of State of Kerala vs. Putthumana Illath Jathavedan Namboodiri, 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..."

From the above, it is very clear that the petitioner herein, who is accused admitted the execution of the cheque and the signature thereof. It is for the accused to rebut the presumption by way of probable defence that he is not at all liable to pay any legally enforceable debt. Therefore, the Appellate Court rightly came to the conclusion that the petitioner has not rebutted the presumption in the manner known to law and dismissed the appeal. This Court while exercising the revisional jurisdiction does not find any valid reason to interfere with the findings of the Courts below and the revision filed by the petitioner/accused is liable to be dismissed.

8. In the result, the Criminal Revision case is dismissed. Consequently, connected miscellaneous petitions are closed. The Trial Court is directed to secure the custody of the accused to undergo the remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The learned Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

2.The Learned XVIII Additional Session Court,
Chennai

3. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.S.Thamilarasi , Advocate SR.No. 24344

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A.SK(26/07/2019)