IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1393 of 2018

Mr.G.Palani ...Petitioner

-Vs-

Mr.R.Ramrajan ...Respondent

This Criminal Revision case is filed under Sections 397 read with Section 401 of Cr.P.C. to call for the records and Judgment in C.A.No. 153 of 2017 dated 04.10.2018 passed by the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee, dismissing the Appeal and confirming the Judgment, sentence and compensation imposed in C.C.No.158 of 2017 dated 10.10.2017 passed by the learned Judicial Magistrate Fast Track Court (Magisterial Level), Ambattur.

For Petitioner : M/s.L.Rajasekar

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C. to call for the records and Judgment in C.A.No. 153 of 2017 dated 04.10.2018 passed by the learned II Additional District and Sessions Judge, Poonamallee, Chennai, dismissing the appeal and confirming the Judgment of sentence and compensation imposed in C.C.No.158 of 2017 dated 10.10.2017 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur.

2. The respondent herein filed a private complaint under Section 200 of Cr.P.C., before the the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur. The learned Judicial Magistrate has taken the complaint on file and after conducting an enquiry found that the revision petitioner has committed an offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 7 months simple imprisonment and also directed him to pay a sum of Rs.10,00,000/- as compensation to the complainant within one

month time, in default, the accused shall undergo Simple Imprisonment for a period of two months, against which the petitioner has filed a appeal before the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee in Criminal Appeal No. 153 of 2017, dated 04.10.2018. The learned II Additional District and Sessions Judge, dismissed the appeal by confirming the Judgment, sentence and compensation imposed in C.C.No. 158 of 2017 dated 10.10.2017. As against the said Judgment, the petitioner has preferred this revision case before this Court.

3. The learned counsel appearing on behalf of the revision petitioner would submit that the revision petitioner has no liability to pay any amount to the respondent as he did not borrow any amount from the respondent. The relationship between the respondent and revision petitioner is only the owner and contractor and hence the respondent gave the amount to the revision petitioner only for the construction purpose and not for any personal loan as stated by the respondent.

4. The learned counsel for the revision petitioner would further submit that there is no legally enforceable debt between the respondent and the petitioner. The revision petitioner rebutted the presumption by cross examining PW1 and also through the documents marked by the respondent in the lower court. The respondent is liable to pay the balance amount for the construction to the revision petitioner. In order to escape from that liability the respondent has filed a false complaint against the revision petitioner. Contradiction statements were made by the respondent in his documents and in his cross examination which proves that the respondent has suppressed the material fact and also not approached the court with clean hands. The examination of PW1 did not support the respondent as he had contraversion with his proof affidavit and also in the complaint which are not in accordance with the law. The source of Income has not been proved by the respondent and also not even a piece of paper has been filed by the complainant to show that he lent a sum of rupees 10 lakhs to the revision petitioner, apart from his construction purpose. It is pertinent to point out that the transaction alleged by the respondent is an unaccounted transaction and it is decided in so many cases that an unaccounted transaction would not come within the purview of section 138 of Negotiable Instruments Act.

5. The learned counsel appearing for the respondent, on previous hearing, submitted that the revision petitioner is a building contractor and he was known to the respondent for construction of house building on his house site at Plot No.809, Korattur which was allotted by the Government. During the period of constructing the house building, by entering into an

agreement for construction, taking advantage of contractual relationship prevailing at the time, the revision petitioner requested the respondent to lend him interest free loan for a sum of Rs.10,00,000/- for the purpose of giving advance for purchasing one ground land in Nesapakkam, K.K.Nagar, Chennai for his business development. Accordingly, the respondent gave interest free loan for a sum of Rs.10,00,000/- to the revision petitioner by way of cheque bearing No.10774 drawn in TNSC bank, Korattur on 13.11.2013. The revision petitioner promised to repay the same in six months and he also gave six months post dated cheque drawn on Karur Vysya K.K.Nagar, Branch Chennai towards repayment of the loan amount.

6. After informing the revision petitioner through notice dated 05.05.2014, the respondent presented the cheque bearing No.001146 for a sum of Rs.10,00,000/- for collection to his banker, TNSC Bank, Korattur Branch, Chennai on 15.05.2014 and the same was returned with endorsement "Stop Payment by the Drawer" vide memo dated 16.05.2014. The respondent issued a legal Notice on 09.06.2014 calling upon the revision petitioner to pay the cheque amount and the same was received by the revision petitioner on 12.06.2014. After receiving the notice, he has not taken any steps to pay the cheque amount till date, though he has admitted in his reply dated 20.06.2014 that he has borrowed a sum of Rs.10,00,000/- from the respondent, but added by stating falsely that the loan amount received from the respondent would have to be adjusted with the expenditure incurred for the construction of the house building but, there is no nexus or connection between the contract entered for constructing the house building and the hand loan transaction, which is subject matter of the present complaint by borrowing hand loan of Rs.10 lakhs and issuing post dated cheque. Thereafter, he failed to honour the cheque by giving instructions to his banker "Stop Payment". Therefore, the accused committed an offence punishable under Section 138 of N.I. Act. It is pertinent to point out that the accused has plainly admitted in his reply dated 22.04.2014 to the notice dated 10.04.2014 that he has received a hand loan of Rs.10,00,000/- and that in consideration of the above amount, he has given 6 months post dated cheque to the complainant, towards payment.

7. The entire transaction took place between the respondent and the revision petitioner at Korattur in the presence of two witnesses namely Mr.K.Sripathy and Mr.S.Nemichand. While, the cheque was issued for interest free hand loan and the revision petitioner promised to repay the same in 6 months period and thereby issued the post dated cheque assuring to honour the cheque at the appropriate time of presenting the said cheque was not fulfilled by the revision petitioner. Though there are

several letter correspondences and notices dated 10.04.2014, 22.04.2014, 24.04.2014, 03.05.2014 and 05.05.2014, the statutory notice asking the revision petitioner to pay the bounced cheque amount was issued on 09.06.2014 both by courier and as well as by RPAD and the notice issued by the respondent was duly acknowledged by the accused on 12.06.2014 and even after the statutory notice, the revision petitioner had sent reply on 20.06.2014 denying the moral liability stating some untenable allegation and liability, which is not true and the accused had issued the post-dated cheque towards his legal liability to repay the interest free hand loan and the issuance of cheque and as well as the borrowal of hand loan is not disputed in any manner. Therefore, the revision petitioner has no other choice to set up any separate story excluding his legal and moral liability to honour the cheque. Hence, the revision petitioner is liable to pay the bounced cheque amount and as well as liable for punishment for committing the offence under Section 138 of N.I Act.

8. Once the execution of the cheque is admitted, signature found in the cheque is not disputed. The Court can draw the statutory presumption. The cheque is executed to discharge legally enforceable debt. No doubt the said presumption is rebutable presumption. On reading of the entire records the petitioner has not rebutted the presumption in the manner known to law.

9. Taking into consideration all the facts and circumstances, this Court sitting on the revisional jurisdiction, does not find any perversity in the order of the both the Courts below. The trial court and the appellate court have rightly appreciated all the oral and documentary evidences filed by both the parties and given a just and reasonable finding. In view of the same, this Court does not find any merit in the revision petition and accordingly, the Criminal Revision Petition is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Judicial Magistrate,
   Fast Track Court (Magisterial Level),
   Ambattur.

2. The II Additional District and Sessions Judge,
   Poonamallee, Tiruvallur.

+1cc to Mr.S.Ramarajan, Party in Person Sr.36702
+2cc to Mr.L.Rajasekar, Advocate Sr.36792

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srg 04/07/2019