



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.12.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.326 of 2018

R.Kandasamy

: Petitioner/Appellant/
Accused

Balakrishnan

Vs.
: Respondent/Respondent/
Complainant

Prayer: Criminal Revision Petition has been filed under Sections 397 and 401 of Criminal Procedure Code, against the order passed in Crl.M.P No.363 of 2018 in Crl.A.No.16 of 2018, by the Principal Sessions Judge, Karur, dated 27.04.2018.

For Revision Petitioner : Mr.K.Sivabalan

For Respondent : Mr.T.A.Punithan

O R D E R

This criminal revision is directed against the order passed in Crl.M.P No.363 of 2018 in Crl.A.No.16 of 2018 by the Principal Sessions Judge, Karur, dated 27.04.2018.

2.The respondent/complainant preferred a complaint under section 138 of the Negotiable Instruments Act alleging that the petitioner has borrowed a sum of Rs.9,00,000/- on 27.01.2013 as loan for his son's marriage by executing a pro-note and agreed to repay the said amount within four months. The petitioner issued a cheque bearing No.972721 of ICICI Bank Limited, Thillai Nagar Branch, Trichy, to discharge the loan. When the cheque was presented for collection, it was returned as "Funds Insufficient". The respondent sent a legal notice to the petitioner calling upon to repay the amount, however, the petitioner failed to repay the amount.

3.The learned Judicial Magistrate No.II, Kulithalai, passed an order in STC No.267 of 2016, dated 22.01.2018 convicting the petitioner. Against which, the petitioner preferred appeal before the Principal Sessions Judge, Karur, in Crl.A.No.16 of 2018. In the meantime, the petitioner filed a petition under section 391 of the Code of Criminal Procedure in Crl.M.P NO.363 of 2018 in Crl.A.No.16 of 2018 permitting to examine one Durai, who is the scribe of the pro-note as additional evidence to bring the real facts for proper adjudication. The learned Sessions Judge dismissed the said petition on 27.04.2018. Aggrieved over the same, the petitioner is before this court.



4. Heard both sides and perused the materials available on record.

5. The learned counsel appearing for the petitioner/accused argued that the petitioner's final chance to prove his innocence is only by letting evidence through the scribe of the pro-note and unless the scribe of the pro-note was not examined, the petitioner cannot establish that the debt is not a legally recoverable debt and the petitioner has not borrowed the amount as stated in the complaint and it is not correct that the petitioner did not take any steps to rebut the presumption and if the petition is not allowed, the petitioner cannot prove his defence and prays that he may be permitted to examine the scribe as his witness, by allowing the criminal revision.

6. On the side of the respondent/complainant, it is argued that already the petitioner was examined four times and the accused also filed a list of witnesses, in which he has not shown the scribe of the pro-note as one of the witnesses and already sufficient opportunities were given to the petitioner to produce all the evidence available with him, but he has not taken any steps to examine the scribe as his witness and hence the petition is not maintainable and prays that the criminal revision is liable to be dismissed.

7. In this case, the petitioner/accused filed a list of defence witness, but in the above list, he has not mentioned the scribe of the pro-note as one of the witnesses. The respondent/complainant filed the complaint under section 138 of the Negotiable Instruments Act on the basis of the cheque alleged to be executed by the petitioner in his favour. It is to be noted here that the petitioner admitted that he borrowed Rs.9,00,000/- from the respondent/complainant and for that, he executed a pro-note. The respondent/complainant stated he demand repayment of the above cheque amount from the petitioner/accused, for that the petitioner/accused issued the disputed cheque. Hence, it reveals that the pro-note is only a supporting document. Further, the petitioner/accused has not denied his signature found in the disputed cheque. Further, already reasonable opportunities were given to the petitioner/accused to examine the defence witnesses. But he failed to examine the scribe of the pro-note as one of the witnesses. No proper explanation was given by the petitioner why he has not taken any steps to examine the scribe of the pro-note before the trial court.

8. At this juncture, it is necessary to refer section 391(1) of the Criminal Procedure Code, which would run thus:-

"391. Appellate Court may take further evidence or direct it to be taken- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall



record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate."

9. On coming to the case on hand, already sufficient opportunities were given by the trial court to the petitioner to rebut the presumption under section 139 of the Negotiable Instruments Act. Hence, it is held that the additional evidence of examining the scribe of the pro-note is not necessary to prove the defence of the petitioner/accused and there is no merit found on the petitioner filed by the petitioner/accused. Further, without examining the scribe, the case can be decided. Hence, it is held that it is not necessary to adduced additional evidence on the side of the petitioner/accused. The reasons stated by the petitioner/accused in his petition is not at all acceptable. Hence, it is not necessary to interfere in the findings of the trial court.

10. In the result, this criminal revision fails and the same is dismissed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)

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To,

The Principal Sessions Judge,
Karur.

+1 CC to Mr.T.A.PUNITHAN, Advocate (SR-105956[F] dated 19/12/2019)

+1 CC to Mr.K.SIVABALAN, Advocate (SR-105957[F] dated 19/12/2019)

Order made in
Cr1.R.C (MD) No.326 of 2018
19.12.2019

VB(22.01.2020) 3P 4C