IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Revision Case No.1004 of 2019

P.Mani .. Petitioner/Accused

- Vs. -

M.N.Madhu .. Respondent/Complainant

Prayer: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code to set-aside the judgement dated 09.08.2018 made in Crl.A.No.99 of 2016 on the file of the learned I Additional District Judge, Salem, confirming the judgement dated 16.09.2016 made in STC No.6 of 2016 on the file of the learned Judicial Magistrate, (Fast Track Court), Omalur.

For Petitioner : Mr. I.C.Vasudevan

For Respondent : Mr. M.Guruprasad.

O R D E R

As against the concurrent conviction and sentence, to undergo Rigorous Imprisonment for one year and to pay a sum of Rs.5,000/- as fine, in default, to undergo one month Simple Imprisonment, for the offence under Section 138 of the Negotiable Instruments Act, imposed by the Courts below against the petitioner / accused, he is before this Court.

2. The case of the complainant / respondent herein is that the petitioner has borrowed a sum of Rs.4,50,000/- on 30.10.2012 as hand loan and issued a post-dated cheque for the said amount, on the same day. When the said cheque was presented on 01.12.2012 for encashment, the same was returned as funds insufficient on 04.12.2012. Thereafter, as per the request of the petitioner, the cheque was again presented for collection on 18.12.2012 and the same was returned for the very same reason. Thereafter the respondent has issued a statutory notice on 07.01.2013. Though the petitioner received the said notice, he has not sent any reply. Hence the respondent has preferred a private complaint under Section 200 of the Cr.P.C, for the offence under Section 138 of the Negotiable Instruments Act against the petitioner.

3. The case of the petitioner herein (accused) is that

the petitioner and respondent are working in the same place and known to each other. In the year 2011, the petitioner has purchased a lorry from the respondent. But the name transfer of the said vehicle was made only in the month of December 2012. At the time of purchase, there was a loan pending with Sri Ram Finance. The monthly instalment has to be paid by the petitioner after the purchase. For security to the prompt payment of the monthly instalment, the petitioner has issued two cheques drawn at Lakshmi Vilas Bank to the respondent. Thereafter the lorry was met with an accident at Bangalore and a case was registered against the driver of the lorry. At the time also, the owner's name was not transferred. In order to indemnify the complainant against any claim, the petitioner has issued another two cheques as security. Stating that one of the cheques was misused by the complainant to get illegal enrichment, the complaint has been filed and hence the same has to be set-aside.

4. After contest, the Courts below concurrently held that the facts projected by the petitioner have not found place in the one and only document, Ex.D-1, marked by him and the petitioner has neither replied to the notice sent by the respondent nor cross-examined the complainant on that aspect and hence the Courts below have convicted and sentenced the petitioner, as aforesaid.

5. Heard both sides.

6. The leaned counsel for the petitioner has submitted that the Courts below passed the judgements only on surmises and not on settled proposition of law; the courts below erred in convicting the petitioner without considering the material fact that the respondent misused the cheque given as security for the lorry which was hypothecated with one Sri Ram Finance. He also submitted that the petitioner is not liable to meet out the alleged debt, as projected by the respondent.

7. Per contra, the learned counsel for the respondent / complainant submitted that based on the materials and evidence on record the Courts below have concurrently found the petitioner guilty under Section 138 of the Negotiable Instruments Act, convicted and sentenced the petitioner and hence no interference is required in the same.

8. This Court has considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

9. Firstly, it has to be pointed out that as an interim relief, this Court has granted the relief of suspension of sentence to the petitioner on 30.09.2019 with certain conditions, which have not been complied with by the petitioner thus far.

10. Secondly, a defence was taken by the petitioner to rebut the presumption under Section 139 of the N.I. Act, through Ex.D-1 that during December 2012, the petitioner has effected the name transfer of the lorry, after clearing all the payments, but the respondent failed to return back the four cheques issued as security. The Courts below disbelieved Ex.D-1 on the ground that even as per the case of the petitioner, he has issued four cheques in the year 2011 itself and the respondent has issued notice on 07.01.2013 only. Since the petitioner has not replied to the said notice and he has not produced any document to substantiate the contention of purchase of lorry in the year 2011 and name transfer in the year 2012, etc, the Courts below have found that Ex.D-1-letter is an after thought and has no relevance to the present case. As per the findings of the Courts below the petitioner has not rebutted the presumption through proper defence or evidence and hence the same cannot be brushed aside easily, since the case of the complainant was substantiated by the evidence and documents produced by the complainant. In the absence of any contra evidence or document on the part of the petitioner or any error apparent on the face of the record, it cannot be contended that the findings of the Courts below are perverse. Hence this Court is of the view that the findings of the courts below do not require any interference.

11. At this juncture, a feeble attempt was made by the learned counsel for the petitioner contending that the respondent has presented the cheque twice and hence that itself would show that the case of the respondent is not true.

12. The said contention no longer holds good. The Supreme Court in the case of Sadanandan Bhadran v. Madhavan Sunil Kumar, 1998 Cri.L.J. 4066 (SC) has held that Section 138 does not put any embargo upon the payee to successively present a dishonoured cheque during the period of its validity. Cause of action arises only when the notice is served on each presentation of the cheque and on its dishonour only, a fresh right arises and not a fresh cause of action. Once the notice was given under clause (b) of Section 138 Negotiable Instruments Act, the cause of action arises and thereafter the payee forfeits his right to further present the cheque. In case of failure of the drawer to pay the money within the stipulated time, he would be liable for the offence and the cause of action for filing the complaint will arise. As per law, a cheque can be presented for payment repeatedly any number of times within six months from the date of drawing of the cheque or within the period of its validity, whichever expires earlier. Such repeated presentation even after dishonour each time may be either voluntary or at the instance of the drawer. Even after such repeated dishonours, it is open to the payee or holder in due course to defer further action under Section 138 of the Negotiable Instrument Act, 1881, based on dishonour. It may also be open to the payee or holder in due course to take further action to complete the cause of action as provided in clauses (b) and (c) of the

proviso to Section 138 of the Act and not to file a complaint within the time specified under Section 142 (1) (b) of the Act for his own reasons. In that event, obviously the payee or holder in due course will lose his right to prosecute the offender for the offence. But, so long as the cheque remains unpaid, the payee or holder in due course will certainly be entitled to present the cheque again. If the cheque is again dishonoured, no provision in Chapter XVII of the Act would expressly preclude the payee or holder in due course from issuing a notice of demand under clause (b) of the proviso to Section 138 of the Act and in case of default in making payment as demanded from filing a complaint, on the basis of the fresh cause of action which accrues to him thereby for a second time. If such a complaint is filed and the complainant is able to establish all the ingredients of the offence and satisfies all other conditions required to be complied with for filing a complaint, it cannot be held on the basis of any express provision in the Act that the complaint is not legally maintainable. (see: S.K.D.Lakshmanan Fireworks Industries v. Sivarama Krishnan (K V) 1995 Cri.L.J. 1384 (Ker) (FB)).

13. In the case on hand, it is admitted by the petitioner that Cheques were issued by him. It is quite natural that the person, who issued or was responsible to issue the cheques, has to rebut the presumption placing necessary evidence, because when cheques are issued towards payment of certain amount, it is presumed that there was existence of a legally enforceable debt. When the issuance of the cheques are admitted by the petitioner, the respondent is entitled to invoke presumption under Sections 118 and 139 of the Negotiable Instruments Act for discharging the subsisting liability and in this case, rightly the respondent has invoked such presumption. The presumption will live, exist and survive and shall end only when the contrary is proved by the petitioner, i.e., the cheque was not issued for consideration and in discharge of any debt or liability.

14. Even assuming the case of the petitioner is to be true that the cheques were issued for the purpose of security, as per the law laid down in 2006 Cri.L.J. 452 M/s. STP Limited v. Usha Paints and 2006 (Cri.) 3760 (Kan) (Smt. Umasamy v. K.N.Ramanatan) the petitioner is held liable to be prosecuted under Section 138 of the Negotiable Instruments Act. Primarily the onus to prove the fact that the cheques were not issued for discharge of any debt and liabilities lies on the accused (petitioner) and not on the (complainant) respondent. Here, in this case, the petitioner has not rebutted such onus by producing oral and documentary evidence, which is fatal to the case of the petitioner.

15. Further more, there is no iota of evidence or document on the side of the petitioner by way of reply to prove that there is no legally enforceable debt or liability due to the complainant. Hence, the petitioner has not rebutted the presumption as contemplated under Section 139 of the Negotiable Instruments Act.

16. In view of the above reasonings, this Court is of the

opinion that cogent and convincing reasons have been recorded by the Courts below for convicting and sentencing the petitioner / accused and hence they are confirmed as such. This Criminal Revision Case is devoid of merits and hence the same is dismissed. The learned Judicial Magistrate is directed to secure the accused and to proceed in accordance with law. If any amount has been deposited by the accused either in the appellate court or in the Trial Court in connection with this case, the same shall be disbursed with accrued interest to the complainant. It is always open to the parties to file an application before the Trial Court under Section 147 of the Negotiable Instruments Act for compounding the offence, even after the accused is taken into custody. In the event of the matter being compounded under Section 147, ibid, before the trial court, the learned Magistrate shall send a report to the Assistant Registrar (Crl. Side) of this Court who shall make it form part of the records in this Case. Registry is directed to transmit the original records, if any, to the respective Courts forthwith.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

Srk

To

1. I Additional District Judge,
   Salem

2. Judicial Magistrate,
   (Fast Track Court), Omalur

3. The Assistant Registrar (Crl.Side),
   High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No. 17292

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RGN(CO)
GN(25/06/2020)