

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 10.02.2020
CORAM
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.353 of 2017 &
Crl.M.P.Nos.3356 and 3357 of 2017

Thirumalai Loganathan

.. Petitioner

Vs

P.V. Markandan

.. Respondent

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C., against the order passed in Crl.A.No.26 of 2016, dated 09.01.2017 on the file of II Addl. District and Sessions Judge, Vellore @ Ranipet, Vellore District, confirming the order of conviction and sentence made in S.T.C.No.754 of 2012, dated 11.04.2016 on the file of Judicial Magistrate, Sholinghur.

For Petitioner : No appearance
For Respondent : Mr.K.G.Senthil Kumar

ORDER

This Criminal Revision Case is filed challenging the judgment of conviction and sentence imposed on the petitioner by the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District, in Crl.A.No.26 of 2016, dated 09.01.2017 confirming the judgment of conviction and sentence dated 11.04.2016 passed by the learned Judicial Magistrate, Sholinghur in STC.No.754 of 2012.

2. The facts leading to file the present Criminal Revision Case are as follows:

(i) On 20.3.2012, the petitioner/accused borrowed a sum of Rs.5,00,000/- from the respondent/complainant, for which, he gave a cheque bearing No.694818 on 10.04.2012 drawn on Indian Bank, Pallipet Branch, in favour of the complainant. On 07.05.2012, when the complainant presented the said cheque for collection in Co-op. Urban Bank Ltd., Sholinghur Branch, the same was returned dishonoured on 9.5.2012 for the reason "funds insufficient". Hence, the complainant issued a legal notice on 23.5.2012 to the accused calling upon him to pay the cheque amount within 15 days.

(ii) The accused on receipt of notice on 29.05.2012, sent his reply notice on 12.06.2012 stating that he already paid the amount of Rs.5 lakhs, which he had borrowed from the complainant and at the time of borrowal, he executed promissory note along with signed blank cheque; after repayment, he returned promissory note, but did not return back the cheque, as it was misplaced; though the complainant undertook to return the cheque in one or two days, he presented the cheque for encashment and hence, there was no legally enforceable debt against the petitioner.

(iii) Since the petitioner did not repay the cheque amount, the respondent filed a private complaint against him for the offence under Section 138 of the Negotiable Instruments Act.

(iv) The trial Court, on going through the materials available on record, found that presumption was drawn in favour of the complainant and the cheque was issued only towards discharge of a legally enforceable debt or liability and the petitioner, being failed to rebut the presumption by preponderance of probabilities, held him guilty under Section 138 of Negotiable Instruments Act, and convicted him as stated above.

(v) Aggrieved by the conviction and sentence imposed by the learned trial Judge, the appellant preferred appeal in CrI.A.No26 of 2016 before the learned II Additional District and Sessions Judge, Vellore, Ranipet. The Appellate Court dismissed the appeal and confirmed the judgment of conviction and sentence passed by the trial Court. Challenging the concurrent findings of both the Courts below, the present Criminal Revision Case is filed.

3. There is no representation for the petitioner either in person or through his learned counsel. Assailing the judgments passed by the Courts below, the petitioner inter alia, raised the following grounds: (i) the Courts below ought to have held that the respondent had fraudulently misused Ex.P1 cheque and had filed a false case against the petitioner; (ii) the Courts below failed to note that the respondent has not advanced any evidence to establish that there was a legal liability as on 20.03.2012 and in the absence of any evidence regarding the capacity to advance such a huge amount by the respondent to advance to the petitioner, ought to have acquitted the petitioner; (iii) once the petitioner has discharged his burden by preponderance of probability that the cheque was not issued towards legally recoverable debt, the burden shifts on the respondent to prove the same, whereas the respondent has miserably failed to discharge his burden; and (iv) the Appellate Court without appreciating the evidence on record in a proper perspective and without assigning any reason, has mechanically

confirmed the judgment of the trial Court. Thus, the petitioner prayed for setting aside the judgments of both the Courts below.

4. The learned counsel for the respondent submitted that the trial Court has considered the materials and evidence in proper perspective and has passed the impugned judgment and the same has been correctly confirmed by the Appellate Court and hence, the judgments of the Courts below do not require any interference in the hands of this Court.

5. Heard the learned counsel for the respondent and perused the materials available on record.

6. At the outset, it is to be borne in mind that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See: State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, etc. (2004) 7 SCC 659]. Very recently, in Bir Singh Vs. Mukesh Kumar [(2019) 4 SCC 197], the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error. "

(emphasis supplied)

7. According to the respondent, the petitioner has committed the offence under Section 138 of the Negotiable Instruments Act. Though the petitioner denied the allegations levelled against him by issuing reply notice, he admitted the signature and issuance of the cheque-in-question. As such, there is a presumption under Section 139 of the Act in favour of the complainant that the cheque in question was issued for the legally enforceable debt against the petitioner. In such circumstances, it is for the petitioner to disprove the same that he has not received the said sum of Rs.5,00,000/- from the respondent and there is no legally enforceable liability against him. Though the petitioner, in his reply notice, has stated that he repaid the due amount of Rs.5 lakhs in January 2012 and he also received the promissory note, he has not adduced any evidence either in oral or documentary to substantiate the said defence. Hence, both the Courts below have rightly found the petitioner guilty of the offence under Section 138 of the Act. This Court finds no infirmity or illegality in the findings so rendered by the Courts below, warranting interference.

8. Therefore, this Criminal Revision case stands dismissed, as devoid of merits. The trial Court is directed to

secure the accused and commit him in prison to undergo the remaining period of sentence, if any. 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 or to his legal heirs, as the case may be. It is always open to the parties to file an application before the trial Court under Section 147 of the N.I. 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 Magistrate shall send a report to the Assistant Registrar (Crl. Side), who shall make it form part of the records in this Criminal Revision. Registry is directed to transmit the original records if any, to the respective Courts forthwith. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (MD)

//True Copy//

Sub Assistant Registrar

msr

To

1. The II Addl. District and Sessions Judge, Vellore @ Ranipet, Vellore District.
 2. The Judicial Magistrate, Sholinghur.
 3. The Chief Judicial Magistrate, Vellore.
 4. The Principal District Judge, Vellore.
 5. The Assistant Registrar (Criminal side), High Court, Madras.
 6. The Public Prosecutor, High Court, Madras.
 7. The Section Officer, Criminal Section, High Court, Madras.
- +lcc to Mr.K.G. Senthilkumar, Advocate, S.R.No.10651.

Cr1.R.C.No.353 of 2017

PM(CO)

VSI-2(29.05.2020)