

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2020

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.80 of 2017
and Crl.M.P.Nos.850 & 851 of 2017

N.Karthikeyan Petitioner/Appellant/Accused

Vs.

M.B.Thiruvengadasamy Respondent/Respondent/
Complainant

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the judgment dated 14.11.2016 made in Crl.A.No.101 of 2015 on the file of the IV Additional District and Sessions Judge, Erode District at Bhavani, confirming the conviction imposed in judgment dated 02.07.2015 made in S.T.C.No.4345 of 2010 on the file of the learned Judicial Magistrate, Bhavani.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.S.R.Balasubramanian

O R D E R

The petitioner herein is the accused and the respondent herein is the complainant. The complaint given by the respondent against the petitioner for the offence under Section 138 of the Negotiable Instruments Act was taken on file as STC No.4345/2010 by the learned Judicial Magistrate, Bhavani. By judgment dated 02.07.2015, the trial Court found the accused guilty of the offence under Section 138 of the Negotiable Instruments Act and accordingly convicted for the same and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a further period of three months. Challenging the same, the petitioner preferred an appeal in Crl.A.No.101 of 2015 before the learned IV Additional District and Sessions Judge, Erode District at Bhavani, which ended in dismissal. Aggrieved over the same, the petitioner has filed this Criminal Revision Case.

2.The learned counsel for the petitioner submitted that the trial Court has failed to appreciate that the respondent had not proved sufficient means to pay Rs.7,00,000/- to the petitioner and he did not file any document to prove his capacity to pay the said amount. He also submitted that even though the case of the respondent is only on the basis of Ex.P1/cheque, he had failed to prove the very execution of Ex.P1. Stating so, the learned counsel prayed for allowing this revision by setting aside the judgments impugned herein.

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

4.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

5.The case of the respondent/complainant is that on 16.05.2010, the petitioner borrowed a sum of Rs.7,00,000/- from the respondent as a hand loan agreeing to repay the same on the very next day and issued a cheque dated 17.05.2010 drawn on UTI Bank, Erode Branch. When the same was presented for collection, it was returned dishonoured with an endorsement "payment stopped by the drawer". Thereafter, the respondent issued a legal notice dated 08.06.2010 to the petitioner, who received the same on 09.06.2010, but did not repay the cheque amount and thereby committed the offence punishable under Section 138 of the Negotiable Instruments Act, which necessitated the respondent to file the private complaint. To support his case, the respondent examined himself as P.W.1 and marked Exs.P1 to P10 documents.

6.The case of the respondent was resisted by the petitioner by raising a defence that he is stranger to the respondent and he never borrowed any amount from him at any point of time and never gave any cheque as alleged in the complaint. According to him, the cheque in question was obtained by the respondent in a fraudulent way and the false case was foisted against him. Hence, he has no legally enforceable debt payable to the respondent. To prove his defence, the petitioner examined the Bank Manager as DW1 and marked Exs.D1 to D5 documents.

7.It is seen from the materials and evidence adduced by the parties that the petitioner has not denied stating that the disputed cheque was not belonging to him. Not even a single suggestion was put to P.W.1 in the cross examination that the

disputed cheque is not that of the petitioner and the signature found therein is also not the signature of the petitioner. Therefore, the petitioner has not disputed the issuance of the cheque and his signature found thereon. As such, the presumption under Sections 118 and 139 of the Negotiable Instruments Act is drawn in favour of the respondent that unless the contrary is proved, the cheque was issued for consideration in discharge whole or part of any legally enforceable debt referred to under Section 138 of the Negotiable Instruments Act. In the said circumstances, the petitioner has to rebut the same by letting any acceptable or probable evidence.

8. On the other hand, the petitioner has not chosen to examine himself as a witness nor subjected himself for cross-examination to prove his defence. He is the only competent person to speak that he did not borrow any amount from the respondent. But he failed to do so. Further, the evidence and materials adduced on the side of the petitioner, have not established the defence so raised. Moreover, the petitioner has not availed the first opportunity by sending reply to the legal notice issued by the respondent, which is also a fatal to his case. Therefore, the trial Court has correctly come to the conclusion that the petitioner failed to rebut the presumption drawn in favour of the respondent, whereas the respondent through the evidence and materials, clearly proved that the disputed cheque was issued by the petitioner for a legally enforceable debt and after issuing the same, he wilfully gave stop payment instruction to the bank and thereby, he committed the offence under Section 138 of the Negotiable Instruments Act. Accordingly, the trial Court has convicted and sentenced the petitioner for the same. The Appellate Court has also dealt with the case properly and rightly confirmed the findings rendered by the trial Court on merits.

9. This Court finds no infirmity or illegality in the well considered judgments of the Courts below.

10. In the result, the Criminal Revision Case stands dismissed being devoid of merits. Consequently, connected Miscellaneous Petitions are closed. 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 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 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 Criminal Revision. Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.IV Additional District & Sessions Judge
Erode District,
Bhavani.

2.The Judicial Magistrate,
Bhavani.

Copy to:

1.The Assistant Registrar
Criminal Section,
High Court, Madras.

2.The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.M.Guruprasad, Advocate,sr.13484.

Rld(co)
krd 20/7

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