BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	20.02.2020
Date of Judgment	16.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.96 of 2018
and
Crl MP(MD)Nos.2417and 2418 of 2018
and
Crl.MP(MD)No.10900 of 2019

Kala : Petitioner/Respondent/Accused

Vs.

P.Raja Sekaran : Respondent/Appellant/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the judgment, dated 06.01.2018 passed in C.A.No.12 of 2017 by the Additional District and Sessions Judge, Theni at Periyakulam, Theni District, reversing the judgment, dated 18.02.2014 passed in STC No.30 of 2013 by the Judicial Magistrate Fast Track Court (Magistrate Level), Theni.

For Petitioner : Mr.S.Saravanakumar

For Respondent : Mr.A.Haja Mohideen

J U D G M E N T

This criminal revision is directed against the judgment, dated 06.01.2018 passed in C.A.No.12 of 2017 by the Additional District and Sessions Judge, Theni at Periyakulam, Theni District, reversing the judgment, dated 18.02.2014 passed in STC No.30 of 2013 by the Judicial Magistrate Fast Track Court (Magistrate Level), Theni.

2.The short facts of the case is that the petitioner/accused borrowed a sum of Rs.1,30,000/- from the respondent/complainant on 21.01.2013 as hand loan to redeem the jewels, which were pledged by the petitioner and her husband with private finance company and promised to repay the said amount within one month and after one month, when the complainant demanded the said amount on 22.02.2013, the accused gave a cheque bearing No.070038, dated 26.02.2013 drawn on State Bank of India, Theni, for a sum of Rs.1,30,000/-. When the same was presented on 27.02.2013 for collection through the State Bank of Travancore, Theni branch, it was returned as unpaid due to Insufficiency of Funds. In this regard, the complainant issued a legal notice to the accused, which was received on 05.12.2013 by the accused and sent a reply notice containing false allegations. Hence, the case.

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

4.The main contention raised on the side of the petitioner/accused is that the money transaction on 21.01.2013 is highly unbelievable one, because the huge among given by the respondent/complainant without any piece of documents and hence, under such circumstances, the respondent/complainant has to prove the passing of consideration and the consideration was not passed and prays that the accused is entitled to acquittal. For that, the learned counsel appearing for the petitioner submitted a decision made in ***Crl.A No.574 of 2010 (T.Subash Vs. Vengateshwaran).***

5.On the other hand, it is argued on the side of the respondent/complainant that the accused on 21.01.2013 borrowed Rs.1,30,000/- from him and agreed to repay the amount within one month, but the petitioner/accused failed to repay the amount and issued the disputed cheque and when the cheque was presented for collection, it was returned as Insufficiency of Funds and hence, the respondent/complainant issued notice and in the reply notice, the petitioner/accused admitted that she borrowed a small amount from the respondent/complainant and for that, the respondent/complainant received the unfilled cheque and he repaid the amount already borrowed and then, the petitioner/accused herself admitted that she borrowed some amount from the respondent/complainant and she herself admitted the passing of consideration and the respondent/complainant filed documentary evidence before the court and hence, the petitioner/accused is liable to pay the amount already borrowed from him, but the petitioner/accused failed to repay the amount and hence, he filed this private complaint and prays that the accused is not entitled to acquittal.

6.The learned counsel appearing for the petitioner/accused in his written argument submitted that the respondent/complainant mainly relied upon the reply notice sent by the petitioner/accused to the effect that she is ready for amicable settlement and according to the reply notice, the respondent/complainant has not stated the full scope of the reply notice and in the reply notice, the petitioner/accused stated that the blank cheque given to one money lender and the dues on the cheque when the money lender was settled only for the exorbitant interest that was the counsel for the petitioner/accused mentioned that amicable settlement and hence, there is no question of interest for the alleged amount and at the time of trial only, she came to understand that Maharajan is the father of the respondent/complainant and in order to grab the money from her, the disputed cheque was presented by the respondent/complainant without giving any consideration to the petitioner/accused and therefore, the argument put forth on the side of the respondent/complainant stating that the petitioner/accused admitted in her reply notice that amicable settlement is not acceptable and it was misleading by the respondent/complainant for achieving his illegal goal before this court and prays that the criminal revision may be allowed.

7.In this case, the complainant was examined as PW1 and the accused was examined as DW3. PW1 during his evidence stated that the accused on 21.01.2013 borrowed a sum of Rs.1,30,000/- and agreed to repay the amount within one month, but the accused failed to repay the amount and hence, she issued the disputed cheque and when the cheque was presented for collection, it was returned as Insufficiency of funds and hence, he issued notice to the accused and for that notice, the accused sent a reply and in the reply, she admitted that she borrowed amount from him and issued the disputed cheque and she herself admitted the borrowal and issuance of cheque, but failed to repay the amount and prays that the accused is to be punished.

8.In this case, the learned counsel appearing for the respondent/complainant sent a notice on 04.03.2013 calling upon the accused to repay the amount, since the cheque issued by her was returned as Insufficiency of funds. For the above notice, the petitioner/accused sent a reply on 18.03.2013. The above reply notice was marked as Ex.P6. Ex.P6 is the earliest document. In Ex.P6, the petitioner/accused stated as follows:-

> *"That, an undated and unamounted empty cheque bearing sl.no.070038 of SBI, Theni branch was obtained by one exorbitant interest charging money lender (Kanthuvatti offender) whose name now stands known as P.Rajasekaran. That, a very small amount of money together with exorbitant interest at the rate of 60% per year was already repaid and the aforesaid undated unamounted empty cheque leaf and one empty stamp paper of 20 rupees denomination bearing number 57AA910193 sl.no.17251 dated 03.11.12 stamp vendor P.Bharathi License No.10412:C1, Theni together with one empty blank green sheet signed by my client were under the illegal custody of the aforesaid money lender."*

9.But DW3 during his evidence stated that he did not know the respondent/complainant and only know the wife of the complainant and there was business transaction between her and the wife of the complainant and then misunderstanding arose between her and the wife of the complainant and one Maharajan and the complainant are doing money lending business and her husband borrowed amount from the said Maharajan and gave the unfilled cheque to Maharajan and now the complainant filed this case on the basis of the blank cheque given by her husband and prays that she is not entitled to pay any amount to the complainant since she has not borrowed any amount from the complainant.

10.In Ex.P6 reply notice, DW3 has not stated the above facts. But she admitted that she borrowed some amount from the complainant and for that, the complainant obtained unfilled cheque. Ex.P6 is the earliest document. If really she did not know the complainant and only know the wife of the complainant and she had transaction with the wife of the complainant and her husband borrowed money from Maharajan only and he gave cheque to Maharajan and the above cheque was misused by the complainant, stated the above contentions in her rely notice, but she has not stated the above facts in her reply notice. Further, on the side of the petitioner, it is submitted that the complainant is an Income Tax Assessee and the accused called for records from the Income Tax Authorities and in the above returns, the amount given to the petitioner/accused was not shown and hence, consideration is not passed and prays that she is not entitled to acquittal.

11.In Ex.P6, the petitioner/accused herself admitted that she borrowed some amount from the complainant and issued the unfilled cheque. The petitioner/accused failed to call for the Cash Register, Day Register in respect of the business transaction of the respondent/complainant to show that she has not borrowed the amount. If the Cash Register and Day Register for the business transaction of the respondent/complainant is produced, it will definitely reveal that whether the accused borrowed the amount from the respondent/complainant or not. But the petitioner herself admitted the transaction between her and the respondent/complainant and borrowal and issuance of the cheque in her reply notice. Hence, it is held that the admitted facts need not be proved. Hence, the Income Tax Returns will not help the petitioner/accused.

12.Further, on the side of the petitioner/accused, it is argued that one Maharajan and the complainant were running finance companies and her husband only borrowed the amount from Maharajan and in order to grab the money from her, the complainant used the cheque and falsely filed this case. To prove that the husband of the petitioner/accused borrowed amount from Maharajan, no document was filed and the husband of the petitioner/accused was not examined as witness. In the reply notice, the accused has not stated the above facts. Hence, it is held that in order to escape from the clutches of law, the accused stated that her husband borrowed some amount from one Maharajan, who is the friend of the complainant and the complainant with the above cheque falsely filed this case against her. Further, it is pertinent to note that the cheque was given by her husband to Maharajan. The accused has not stated that her husband gave the cheque stands in the name of her. Further, the accused admitted the signature in the disputed cheque. Unless and until the contrary is proved, it is proved that the accused only borrowed Rs.1,30,000/- and gave the disputed cheque.

13.At this juncture, it is significant to refer Section 118 of Negotiable Instruments Act, which would run thus:-

> *"Presumptions as to Negotiable Instruments of consideration until the contrary is proved, the following presumptions shall be made."*
>
> *a)***of consideration:***- that every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred for consideration.*
>
> *b)***as to date:***- that every negotiable instrument bearing a date was made or drawn on such date.*

14.Section 139 of Negotiable Instrument Act reads as follows:-

> ***"Presumption is favour of hold:****- It shall be presumed unless the contrary is proved that the holder of a cheque received the cheque or the nature referred to in Section 138 for the discharge in whole or or part of any debt of other liability".*

So the presumption is no doubt, it is a rebuttable presumption, but the accused has not rebutted the presumption as known to law. Therefore, in the absence of contrary proof, the cheque was issued for consideration.

15.For all the reasons stated above, this court is of the considered view that the order passed by the courts below is confirmed. However, considering the facts and circumstances of the case, this court finds that the conviction imposed on the petitioner is liable to be set aside and the compensation amount is to be raised to Rs.2,00,000/-.

16.In the result, this criminal revision is partly allowed. The punishment imposed on the petitioner by the first appellate court for the offence under section 138 of Negotiable Instruments Act alone is set aside. The compensation awarded by the first appellate court is enhanced to Rs,.2,00,000/-, which shall be payable to the respondent/de-facto complainant, within a period of four weeks from the date of receipt of the order copy, less the amount already paid. Consequently, connected Miscellaneous Petitions are closed.

17.Post the matter after four weeks for reporting compliance.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1.The Additional District and Sessions Judge,
Theni at Periyakulam.

2.The Judicial Magistrate Fast Track Court (M.L)
Theni.

3.The Chief Judicial Magistrate, Theni.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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