BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.02.2020
Date of Judgment	30.06.2020

CORAM

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

Crl.RC(MD)No.785 of 2019
and
Crl.MP(MD)No.8979 of 2019

Satheeshkumar : Petitioner/Accused

Vs.

1.Francis

2. The State of Tamil Nadu
represented by the Public Prosecutor,
Nagercoil,
Kanyakumari District. : Respondents/Complainants

Prayer: Criminal Revision filed under sections 397 r/w 401 of the Code of the Criminal Procedure against the judgment, dated 02.08.2019 passed by the Additional District and Sessions Judge, Nagercoil, in C.A No.66 of 2013, partly modifying the judgment passed by the Judicial Magistrate No.1, Kuzhithurai, in STC No.2597 of 2009, dated 21.10.2013.

For Petitioner : Mr.B.Rooban
For 1st Respondent : No appearance
For 2nd Respondent : Mr.A.P.G. Ohm Chairma Prabhu
Government Advocate
(Criminal side)

J U D G M E N T

This criminal revision is directed against the judgment, dated 02.08.2019 passed in C.A.No.66 of 2013 by the Additional District and Sessions Judge, Nagercoil, partly modifying the judgment of the Judicial Magistrate No.1, Kuzhithurai, passed in STC No.2597 of 2009, dated 21.10.2013.

2.The short facts of the case is that the accused is known to the complainant in his business and on 10.02.2009, the accused borrowed a sum of Rs.6 Lakhs from the complainant in his house and gave a cheque of Indian Bank, Parasalai branch bearing No.472905, dated 10.02.2009 and when the complainant presented the cheque for collection in State Bank of India, Jawahar Nagar, Trivandrum on 17.06.2009, the same was dishonoured on 26.06.2009 as "**Funds Insufficient**". In this regard, the complainant issued a legal notice to the accused on 06.07.2009 and on receipt of the notice on 11.07.2009, gave a reply on 22.07.2009 denying the transactions. Hence, the case.

3.The trial court, on proper appreciation of the entire materials on record, both oral and documentary found the accused guilty, convicted him for the offence under section 138 of the Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.3,000/-, in default SI for three months. On appeal, the first appellate court, confirmed the conviction passed by the trial court and set aside the sentence passed by the trial court, while confirming the fine amount and the default sentence imposed by the trial court and directed the accused to pay a sum of Rs.6,00,000/-, being the cheque amount to the complainant as compensation, in default the accused shall undergo six months simple imprisonment and directed the accused to deposit the amount before the trial court on or before 31.10.2019 and directed the trial court to disburse the amount to the complainant on proper identification and in default to pay the compensation amount within the stipulated time, the Judicial Magistrate is directed to take steps to secure the accused for serving the default sentence. Aggrieved by the judgment of the first appellate court, the petitioner/accused is before this court.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal side) appearing for the 2nd respondent. In spite of giving several opportunity, there is no representation for the 1st respondent.

5.The main contention raised on the side of the petitioner/accused is that there is no money transaction between the complainant and the accused as stated by the complainant and the accused is only a staff in the Firm namely Dhanalakshmi Enterprises, which was conducted by the complainant and since the complainant had committed cheating in the payment of the Customs Tax, due to the Government, he was liable to pay a sum of Rs.27,97,867/- to the Government and the complainant paid some amount and to pay the remaining amount, he demanded the accused to give some amount as loan, but the accused did not pay any amount to the complainant and hence on 01.07.2008 at 9.00 pm, the complainant along with henchmen entered into the house of the accused forcibly and taken away 7 cheque leaves of Indian Bank, Parasalai Branch belonging to the accused and this complaint is filed by using one of the cheque leaves taken away by the complainant from the house of the accused and the complainant has not proved any ingredients to punish the accused under section 138 of the Negotiable Instruments Act and hence, prays that the accused is entitled to acquitted from the case, by allowing this criminal revision.

6.On the other hand, it is the contention of the first respondent/complainant that on 10.02.2009, the accused came to his house and borrowed a sum Rs.6 Lakhs from him and gave a cheque of Indian Bank and as stated by the accused, the complainant presented the cheque for collection in State Bank of India, Jawahar Nagar, Trivandram, on 17.06.2009, but the cheque was returned on 26.06.2009 as "Funds Insufficient" and hence, the complainant issued a legal notice to the accused on 06.07.2009 and after receipt of the notice on 11.07.2009, the accused gave a reply on 22.07.2009 denying the transactions and the accused has given the cheque to the complainant by fully knowing that he is not having sufficient funds in his account and only in order to cheat the complainant, the accused has committed the offence under section 138 of the Negotiable Instruments Act and prays for dismissal of the criminal revision.

7.The contention of the accused is that he is working under the complainant Firm namely Dhanalakshmi Enterprises for daily wages. To prove that the accused was working under Dhanalakshmi Enterprises, no document was filed. The complainant stated during his evidence that he know the accused, when he sent building materials to Kerala for the construction of Apartments. The complainant specifically denied that the accused was not working under him. The further contention of the accused is that due to financial crisis, the 1st respondent/complainant came to his house and threatened him with deadly weapons and took away 7 cheque leaves including the disputed cheque and subsequently, the complainant/1st respondent foisted this case by using the above cheque. It is to be noted that to prove the above fact, the accused has not given any complaint before the police. No explanation was given, why the accused has not chosen to give any complaint, even though the occurrence is severe in nature.

8.It is needless to say that an ordinary prudent man can give the complaint immediately, when any incident occurred against him. But the accused has not chosen to give the complaint before the police. Hence, it creates doubt about the contention raised by the accused. The complainant specifically denied that the accused was not his worker, hence, it is his bounden duty to prove that he is the staff of the complainant. But no document was filed on the side of the accused to prove that he is the staff of the complainant. Further, the complainant denied during his evidence that he is not running the Firm namely Dhanalakshmi Enterprises. But to prove that the complainant has connection with the Dhanalakshmi Enterprises, on the side of the accused, Exs.D1 and D2 were marked. On careful perusal of Exs.D1 and D2, it reveals that the complainant gave a complaint against the accused and some others persons stating that they committed fraud against him. It is seen that in the First Information Report, the official address and the residential address of the complainant were shown. The official address is shown as Dhanalakshmi Enterprises, Engi village, Parasala. Hence, from Exs.D1 and D2, it reveals that the complainant is the licensee for payment of Customs and Sales Tax. Hence, it is held that the complainant is having connection with Dhanalakshmi Enterprises. Therefore, the contention of the complainant stating that he is not connected with Dhanalakshmi Enterprises is not at all acceptable.

9.The learned counsel appearing for the accused argued that the complainant is running the Firm namely Dhanalakshmi Enterprise in Kerala and the alleged occurrence took place only in Kerala State and hence, this court has no jurisdiction to try the case and on that ground also, the accused is entitled to acquittal.

10.But it is the case of the 1st respondent/complainant that the complainant company is residing in Tamil Nadu and the accused came to the complainant's house and borrowed a sum of Rs.6,00,000/- from him and issued the disputed cheque and hence, the transaction had taken place only in Tamil Nadu and hence, this court has jurisdiction to try the case.

11.In this case, the complainant sent a notice calling upon the accused to repay the amount already borrowed from him. The copy of the notice was marked as Ex.P4. In the notice and in the complaint, the complainant stated that he was residing in Minnamcode, Padanthalumoodu Post, Vilavancode Taluk, Kanyakumari District. Further, the complainant specifically stated that the accused came to his house and borrowed the amount. The accused has received the notice sent by the complainant and gave reply denying the transactions.

12.In the judgment reported in ***AIR 2007 (DOC) 119 AP : 2006(4) AJCLR 632 (AP) in the case of M/s.C & C Enterprise, Hyderabad Vs. State of A.P & another,*** it is held that in dishonoured cheque cases, mere sending of notice is sufficient and the endorsement in the postal receipt will not affect the case of the complainant. On coming to the instant case on hand, the complainant sent Ex.P4 notice and the same was received by the accused and also gave reply denying the allegations found in the notice. Further, in this case, the accused has not denied Ex.P1 cheque and his signature found in the cheque. On the other hand, it is admitted by the accused that Ex.P1 belongs to him. Since the cheque is admitted by the accused and the signature in the cheque is not denied, it has to be presumed that under Section 118 of the Negotiable Instruments Act, the cheque is given by the accused to the complainant for the discharge of legally enforceable debt. Hence, it is his bounden duty to rebut it. But the accused failed to rebut the presumption. As per section 118 of the Negotiable Instruments Act, the accused admitted his signature. Unless contrary is proved, it is presumed that the accused borrowed a sum of Rs.6,00,000/- from the accused on 11.01.2009 and issued 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, it is held that the cheque was issued for consideration.

15.For all the reasons stated above, this court is of the considered view that trial court as well as the first appellate court correctly came to the conclusion that the accused only borrowed the amount from the complainant and issued the disputed cheque and failed to repay the amount. Hence, it is held that the findings of the first appellate court do not call for any interference by this court and accordingly, the same is confirmed.

16.In the result, the criminal revision fails and the same is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.1,
   Kuzhithurai.

2. The Additional District and Sessions Judge,
   Nagercoil.

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

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