BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C(MD)No.489 of 2017

A.M.C.T.M.Ramamoorthy ... Petitioner

Vs

Majith ... Respondent

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 29.07.2016 made in C.A.No.43 of 2013 on the file of the Additional District Court, Pudukottai, reversing the order made in C.C.No.496 of 2004, dated 06.08.2013, on the file of the Judicial Magistrate Court, Aranthangi.

For Petitioner : Mr.R.Murali
For Respondent : Mr.Thiruvadikumar
For Mrs.A.Banumathy

ORDER

Heard the learned counsel on either side.

2.The revision petitioner herein filed C.C.No.496 of 2004 on the file of the Judicial Magistrate Court, Aranthangi, for the offence under Section 138 of the Negotiable Instrument Act against the respondent herein.

3.The case of the petitioner is that the respondent had availed a sum of Rs.5,00,000/- as loan on 09.07.2004 and executed a promissory note towards partial discharge of said liability. The respondent issued Ex.P.1- cheque, dated 07.09.2004 for a sum of Rs.3,50,000/- favouring the complainant. The complainant presented the said cheque on 15.09.2004. The cheque was returned unpaid on 16.09.2004 and intimation was received by the complainant on 20.09.2004. The complainant issued a statutory notice dated 29.09.2004. The accused received the same and also issued reply notice dated 12.10.2004. Since the demand set out in the statutory notice was not complied with, the private complaint came to be laid.

4.The complainant himself examined as P.W.1 and examined two other witnesses and marked Exs.P.1 to Exs.P.8. The accused himself examined as D.W.1 and no documents were marked.

5.The learned Trial Magistrate, Aranthangi, after a consideration of evidence on record, vide judgment, dated 06.08.2003, found the accused guilty of the offence under Section 138 of Negotiable Instrument Act and sentenced him to three months Simple Imprisonment and also directed him to pay the cheque amount of Rs.3,50,000/- as compensation.

6.Aggrieved by the same, the accused filed Criminal Appeal No.43 of 2013 before the Additional District and Sessions Judge, Pudukottai. The learned Appellate Judge, vide order, dated 29.07.2016, allowed the appeal and acquitted the accused. Challenging the same, this revision case came to be filed.

7.Even before the commencement of arguments, the learned counsel for the respondent, on instructions, stated that in order to give quietus to the issue, the respondent is ready to pay a sum of Rs.75,000/- to the revision petitioner, irrespective of the outcome. The said submission made by the learned counsel for the respondent is placed on record.

8.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds and contended that the First Appellate Court erroneously interfered with the findings of the Trial Magistrate. According to him, the accused was a business man, who had also studied upto B.Sc.

9.The learned counsel took me through the deposition of D.W.1 and pointed out that during the relevant time, the accused was under need to raise funds. He also would point out that the signature found on the cheque is not in dispute. According to him, the cheque was handed over to the complainant and the complainant was not aware whether the entire body of the cheque was written in same ink or not. The complainant trusted the accused and received the cheque as it was and presented the same for collection. Therefore, the reasons assigned by the Appellate Court cannot be sustainable.

10.I am not persuaded by the submission of the learned counsel for the revision petitioner / complainant. The complainant by his own averments was a financier who had also taken license from the Jurisdictional Tahsildhar. He is also an Income Tax Assessee. A sum of Rs.5,00,000/- is certainly a substantial amount of money. Therefore, one who would expect that the transaction in question is duly reflected both in the statement of accounts and also in the income tax returns. The complainant took the stand that he would not produce the said returns before the Courts below. The complainant made a statement that since the loan was given out of his funds, he would not be in a position to file the documents. That makes this Court seriously doubt the case of the complainant.

11.In the complaint, the complainant has stated that the accused had executed a promissory note. But the said promissory note was not marked before the Trial Court. The cheque in question has been filled up by in different ink. The signature is in one ink and the rest of the body of the cheque word is in some other ink. Therefore, the version of the accused that the Ex.P.1 cheque was given as a security and that the same was misused by filling up a highly enhanced and inflated figure is quite believable.

12. It is true that the Courts below were justified in raising a presumption under Section 139 of the Negotiable Instrument Act against the accused. But the said presumption is a rebuttable presumption. The standard of proof is also far lesser. The accused has to rebut the presumption on the touch stone of preponderance of probability.

13.I hold that the Appellate Court rightly held that the accused has discharged the burden cast on him.

14.I cannot lose sight of the fact that what is under challenge in the Judgment of acquittal. When two views are possible, certainly the view that favours the accused has to be accepted.

15.In the case on hand, the case of the complainant and that of the defence of the accused are not on the same footing. The accused had more than convinced this Court that the cheque given by him as a security has been filled up for an inflated figure. It is also seen that the accused had given a reply to the statutory notice. Thus at the earliest point of time, the defence of the accused has been projected.

16.Therefore, I decline to interfere with the judgment of the acquittal passed by the learned Appellate judge and the revision case is dismissed. However, recording the undertaking given by the respondent through his counsel, the respondent is directed to deposit a sum of Rs.75,000/- to the credit of C.C.No.496 of 2004 on the file of the Judicial Magistrate Court, Aranthangi. The complainant is at liberty to withdraw the said amount without notice to the respondent herein. I have given this direction, even though I have confirmed the judgment of acquittal in order to satisfy my Judicial conscience. It is fairly stated by the accused through his counsel that he borrowed a sum of Rs.75,000/- and that even though he had fully paid the said amount, a dispute with regard to interest arose. Since the accused stuck to his ground, the complainant had instituted the instant prosecution. That is why, the accused on his own has offered to pay the said amount. Recording the same, I have given the aforesaid direction.

17.With the aforesaid direction, this Criminal Revision case is dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Additional District Judge,
Pudukkottai

2.The Judicial Magistrate,
Aranthangi.

3. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to Mr.R.MURALI, Advocate SR.No.27200

Crl.R.C(MD)No.489 of 2017
22.12.2020

vr(CO)
TR(05.02.2021) 4P 6C