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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.60 of 2019 &
Crl.M.P.Nos.476 & 477 of 2019

Mohana D'Souza

...Petitioner / Accused

Vs

B.Elangovan

...Respondent / Complainant

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the order dated 12.10.2018 made in C.A.No.209 of 2018 passed by the learned XV Additional Sessions Court, Chennai, confirming the order dated 28.03.2018 made in C.C.No.934 of 2011, passed by the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai.

For Petitioner : Mr.C.Sivanesan

For Respondent : Mr.C.P.Sivamohan

O R D E R

The petitioner is the accused. The respondent is the complainant. The respondent filed complaint in C.C.No.934 of 2011 against the petitioner under Section 138 of the Negotiable Instruments Act before the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Chennai. The learned Magistrate had taken the complaint on file and after enquiry, the learned Magistrate found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo six months imprisonment and directed him to pay a sum of Rs.3,75,000/- towards compensation to the complainant, in default of payment of compensation to the complainant, to undergo simple imprisonment for 2 months.

2. Challenging the said Judgment of Conviction and Sentence, the petitioner herein filed appeal before the learned Principal Sessions Judge, Chennai and learned Judge taken the appeal on file in C.A.No.209 of 2018 and made over the appeal to the XV Additional Session Judge, Chennai to dispose the appeal in accordance with law.



3. The learned Additional Session Judge after hearing the arguments and considering the materials, dismissed the appeal and confirmed the Judgment of conviction and sentence passed by the learned Magistrate. Challenging the dismissal of appeal, the Petitioner has approached this Court by way of the present Revision.

4. The learned counsel for the petitioner would submit that the appellate Court failed to consider that Ex.P5 issued by the respondent-complainant through his counsel to the appellant / accused and the old case stood on Ex.P5. The same was detailed nine cheques totalling a sum of Rs.8,75,000/, but the respondent/complainant demanded a sum of Rs.10,25,000/- towards cheque amount, which clearly shows that there is an ambiguity whether the appellant/accused has to pay the total cheque amount of Rs.8,75,000/- or Rs.10,25,000/-. The learned Magistrate failed to appreciate the defense side evidence and also defense taken by the petitioner and erroneously convicted the petitioner and in the appeal before the 1st appellate Court also, the same was confirmed. Therefore, the judgment warrants interference of this court.

5. The learned counsel for the respondent/complainant would submit that the petitioner himself admitted the issuance of cheque and she has also not disputed the signature in the cheques. Both the learned Magistrate as well as the learned Appellate Court rightly considered the oral and documentary evidence and had rightly come to the conclusion that the petitioner has committed the offence and there is no merit in the Revision and the same is liable to be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The case of the respondent/complainant is that the petitioner/accused approached the complainant for loan through a common friend and availed a loan to the tune of Rs.10,25,000/-, on various dates. In order to discharge the said loan, the accused issued four cheques bearing No.431275, dated 17.08.2010 for Rs.75,000/-; 560765, dated 07.10.2010 for Rs.50,000/-; 560779, dated 22.10.2010 for Rs.1,00,000/- and another cheque bearing No.176793, dated 15.07.2010 for Rs.1,50,000/-, drawn on Ondian Overseas Bank, Kilpauk Chennai. The complainant presented the above cheques for payment, but the same were returned as dishonoured by the accused banker with memo dated 25.11.2010 with an endorsement "funds insufficient" and the same was intimated to the complainant on 26.11.2020. After repeated demands, the accused failed to repay the cheque amount, therefore, the complainant issued a statutory legal notice,



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dated 09.12.2010 to the accused and the same was received on 10.12.2010. As per the notice, the accused had not come forward to pay the amounts claimed within one month from the date of receipt of notice. Instead of that, the accused sent a reply dated 20.12.2010, accepting her liability. But, in the said reply, the accused had stated that she availed a loan of Rs.10,00,000/- and also stated that the cheques were given as security. The allegations are frivolous and above cheques were not given as security. To prove the averments made in the complaint, on the side of the respondent/complainant, complainant examined himself as P.W.1. and 13 documents were marked and the petitioner/accused has not denied the signatures and the only defence taken by the petitioner is that there are discrepancies in the loan amount paid by the respondent/complainant and the loan amount received by the petitioner/accused and the conviction is based on the document in Ex.P6, which is reply notice issued by the petitioner/accused to answer the demand notice issued by the respondent/complainant, which was invalid before the eye of law. However, to disprove the said contention, the petitioner/accused has not produced any document and hence, the learned appellate Judge, rejected the said contention.

8. It is seen from the records that the petitioner had admitted the execution of cheques and also admitted that the signatures found in the disputed cheques are that of her. It is settled proposition of law that once signature and execution of cheque is admitted then automatically, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque.

9. While exercising revisional jurisdiction, this Court has to see as to whether any perversity in appreciating the evidence in deciding the case. Since the signature in the cheques are not denied by the revision petitioner/accused, this Court can draw presumption under Sections 118 and 139 of the Negotiable Instruments Act. It is for the petitioner/accused to rebut the presumption. Admittedly, in this case, the revision petitioner has not rebutted the presumption in the manner known to law.

10. While exercising revisional jurisdiction, this Court need not sit in the armchair of the appellate Court and revisit the entire evidence and also reappraise the same. At the same time, the Court has to find out as to whether any perversity in appreciation of evidence in the orders passed by both the Courts below.

11. On reading of the entire oral and documentary evidence, the trial Court, on proper appreciation of evidence, rightly convicted the petitioner/accused. The appellate Court, as a



fact finding Court, re appreciated the entire evidence, and dismissed the Appeal.

12. Therefore, this Court does not find any perversity in the Judgment of the both the Courts below and there is no merit in the revision. Accordingly, the Judgment passed by both Courts below are hereby confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore.

2.The XV Additional Sessions Judge,
Chennai.

+1cc to Mr.M.Baskaran, Advocate Sr.No.33874

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MG(CO)
RVM(19/08/2021)