IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2021
PRONOUNCED ON : 13.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.28 of 2019

S.R.Neraj ...Petitioner/Accused

Vs.

D.Gunasekaran ...Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 25.09.2018 made in Crl.A.No.94 of 2016 on the file of the learned XVIII Additional Sessions Judge, Chennai, confirming the judgment of conviction passed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore, Chennai, in C.C.No.326 of 2013, dated 18.03.2016.

For Petitioner : P.Kumaresan for M/s.S.A.Akbar

Respondent : Mr.V.Parthiban

O R D E R

The criminal revision has been filed against the concurrent judgment of conviction made by the Courts below for the offence under Section 138 of Negotiable Instruments Act (in short 'NI Act').

2 The petitioner is an accused and respondent is a complainant. The respondent filed a private complaint under Section 200 of Cr.P.C. against the petitioner for the offence under Section 138 of NI Act, and the same was taken on file by the learned XIV Metropolitan Magistrate and was later transferred to the learned Metropolitan Magistrate (Fast Track Court No.II), Egmore, Chennai, and numbered as C.C.No.326 of 2013.

3 Before the trial Court, in order to prove the case of the complainant, he examined himself as P.W.1 and marked Exs.P1 to P5. On the side of the accused, no one was examined and during cross examination of P.W.1, the petitioner/accused marked two documents as Ex.D1 and D2. The learned Magistrate, after due enquiry, found the petitioner/accused guilty for the offence under Section 138 of NI Act and hence by judgment dated 18.03.2016, convicted him and sentenced to undergo simple imprisonment for a period of one year and directed to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the complainant as compensation under Section 357(3) of Cr.P.C., in default, to undergo simple imprisonment for a further period of three months. Aggrieved against the same, the petitioner has preferred an appeal in C.A.No.94 of 2016 before, the learned XVIII Additional Sessions Judge, Chennai. Pending the above appeal, the complainant marked addition documents as Ex.P6 to Ex.P10 and the petitioner/accused has also marked one additional document as Ex.D3. The learned Additional Sessions Judge, after hearing both the counsel and adverting to the materials, by judgment dated 25.09.2018, dismissed the appeal and confirmed the conviction and sentence made by the trial Court, against which, present revision has been filed.

4 The case of the respondent/complainant is that the petitioner/accused was doing business of share in the name and style of M/s.Samarath Ventures at Chennai. The complainant's co-brother one Sundaramurhty, who is close to the accused had introduced him to the complainant. At that time, the petitioner/accused requested the complainant for a hand loan of Rs.3,00,000/- to meet his business commitments. On seeing the social status of the accused and the recommendation from the co-brother, the complainant gave a sum of Rs.3.00 lakhs to the accused by way of cheque bearing no.116413 dated 23.01.2012 drawn on Axis Bank Limited, Anna Nagar Branch. The petitioner accused had encashed the same and agreed to repay the said amount within a short period, but, he did not repay the amount in spite of several requests and reminders made by the respondent/complainant. At one stage, the accused had issued a cheque bearing no.006585 dated 13.09.2012 drawn on IDBI Bank, Kumbakonam Branch, for a sum of Rs.3.00 lakhs towards repayment of the said hand loan. The respondent/complainant presented the cheque on 13.09.2012 for encashment and the same was returned as “funds insufficient”. The respondent/complainant informed the same to the petitioner/accused, for which, the petitioner requested the respondent to re-present the cheque again in the first week of December 2012 and accordingly the respondent/complainant re-presented the said cheque on 06.12.2012, but, on 08.12.2012, the said cheque was returned with and endorsement “insufficient funds”. Hence the respondent/complainant issued a legal notice on 18.12.2012, for

which the petitioner/accused neither sent any reply nor repaid the amount and therefore the respondent has filed a private complaint. The trial Court after considering all the materials placed on record and the arguments advanced on either side had rightly come to the conclusion that the petitioner found guilty of offence under Section 138 of NI Act and the lower appellate Court has also confirmed the conviction made by the trial Court, since it is well founded.

5 The learned counsel appearing for the petitioner/accused would submit that the petitioner has not issued the cheque towards any legally enforceable debt. As per the complainant, if the petitioner obtained any hand loan from him, he should have obtained any document for the same, but, the respondent/complainant has failed to do the same, which clearly shows that the petitioner had not borrowed any amount from the respondent. Further, it is the case of the respondent/complainant that his co-brother Sundaramurthy is close to this petitioner and at request of the said Sundaramurthy only the respondent given the said amount of Rs.3.00 Lakhs as hand loan, but the fact remains that the respondent has utterly failed to examine the said Sundaramurhty to prove his case. Both the trial Court as well as the lower appellate Court had miserably failed to note the above defects and the defence taken by the petitioner. Once the petitioner proved that he did not borrow any amount from the respondent/complainant, it is for him to prove the liability on the part of the petitioner/accused. The petitioner was convicted only based on the presumption under Section 139 of NI Act and hence the same is liable to be set aside.

6 The learned counsel appearing for the respondent/complainant would submit that the petitioner/accused borrowed a sum of Rs.3.00 lakhs as hand loan and agreed to repay the said amount within a short period. But, despite several requests and reminders made by the respondent/complainant, he did not repay the amount and at one stage, the accused had issued a cheque bearing No.006585 dated 13.09.2012 drawn on IDBI Bank, Kumbakonam Branch, for a sum of Rs.3.00 lakhs towards repayment of the said hand loan, which was marked as Ex.P1 and when the same presented on 13.09.2012 for encashment, returned as "funds insufficient". On request of petitioner/accused to re-present the cheque again in the first week of December 2012, the respondent/complainant re-presented the said cheque on 06.12.2012, but, on 08.12.2012, the said cheque was returned with and endorsement "insufficient funds", which was marked as Ex.P2. Hence the respondent/complainant issued a legal notice on 18.12.2012, which was marked as Ex.P3 and the same was received by the petitioner/accused through acknowledgment Ex.P4. The petitioner/accused being received the said notice Ex.P3, neither

sent any reply nor repaid the amount. Hence both the Courts below have rightly come to the conclusion that the petitioner/accused has committed offence under Section 138 of NI Act and convicted accordingly, which does not call for any interference of this Court and this criminal revision is liable to be set aside.

7 Heard the learned counsel appearing on either side and has carefully perused the materials placed on record.

8 The petitioner filed this revision against the concurrent judgment of conviction made by the Courts below. The petitioner/accused admitted his signature and execution of cheque. He also admitted that there was transaction regarding investments in share market. Even though, the petitioner/accused marked Exs.D1 to D3, which were not helpful to him and the same has not rebutted the presumption favouring the respondent/complainant. It is the plea of the petitioner/accused that he did not borrow any loan from the respondent and the cheque in question was issued only for security purpose for the amount obtained from the respondent for investing the same in share market, but, the petitioner has failed to prove his defence in the manner know to law.

9 On a careful reading of the documents marked by both the petitioner/accused and the respondent/complainant, it is clear that the respondent/complainant proved his case and also the fact that the petitioner borrowed money as hand loan and failed to repay the same, in spite of receiving the statutory notice. Once the complainant has proved borrowal of money and issuance of cheqe towards discharge the same, presumption under Section 118 and 139 of NI Act would come into play, which favours the complainant, holder of the cheque. No doubt, the said presumption is rebuttable presumption. The petitioner need not come into witness box and produce a strong piece of proof to rebut the presumption, he can rebut the presumption through preponderance of probability or probable defence, even by cross examining the witnesses. An accused need not prove his case with same rigor as prosecution is required to prove its case. It is sufficient, if the defence succeeds in throwing reasonable doubt on the prosecution case. In this case, on reading of the entire materials placed on record, it reveal that the petitioner/accused has failed to rebut the presumption drawn in favour of the respondent/complainant. In the absence of the same, this Court does not find any perversity or illegality or infirmity in the judgment of conviction made by the trial Court and confirmed by the lower appellate Court and there is no merit and substance in the revision case.

10 In the result, the criminal revision case is

dismissed. Trial Court is directed to secure the petitioner/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS-VII)

// True Copy//

Sub Assistant Registrar

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To

1.The XVIII Additional Sessions Judge,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court II,
Egmore, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

+2ccs to Mr.V.Parthiban, Advocate, S.R.No.32817

+2ccs to Mr.S.A.Akbar, Advocate, S.R.No.33440 (04/10/2021)

Pre-Delivery Order in
Crl.R.C.No.28 of 2019

KK(CO)
SU(07/09/2021)