



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2021

PRONOUNCED ON : 04.02.2021

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL REVISION CASE NO.1749 OF 2007

AND

M.P.NO.1 OF 2007

1. Rasipuram Lorry Owner's Association,
Rep. by its President,
Old Bus Stop, Rasipuram,
Namakkal District.
2. Rasipuram Lorry Owner's Association,
Rep. by its Secretary,
Old Bus Stop, Rasipuram,
Namakkal District.

... Petitioners

/versus/

M.Velayutham,
S/o.Late Manickam,
Yuvaraj Lodge Palace Shop,
Town Bank Street,
Rasipuram, Namakkal.

... Respondent

Prayer:

Criminal Revision Petition is filed under Sections 397 & 401 of Criminal Procedure Code, against the conviction imposed in Judgment dated 05.11.2007 made in C.A.No.53 of 2006 on the file of the Additional District and Sessions Court/Fast Track Court Namakkal, confirming the conviction imposed in the judgment dated 06.09.2006 made in C.C.No.408 of 2003 on the file of the Judicial Magistrate, Rasipuram, sentencing them to undergo one year S.I with fine of Rs.5,000/- in default to undergo 3 months S.I each., for the offence under Section 138 of Negotiable Instrument Act.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.V.Sairam



O R D E R

The Criminal Revision Petition is directed against the concurrent finding of guilt against the revision petitioners in the private complaint filed under Section 138 of Negotiable Instrument Act.

2. The brief facts leading to this revision petition:

As per the complainant filed under Section 138 of the Negotiable Instrument Act, the complainant and the accused persons are know to each other. The complainant is carrying on business in Rasipuram. The accused persons are Office bearers of Rasipuram Lorry Owners Association. The said Association is running a petrol bunk outlet in Rasipuram. For the urgent need, the accused persons borrowed Rs.6,00,000/- in cash as hand loan from the complainant on 20.11.2002. When the complainant asked back the money. The accused persons gave a cheque drawn at Canara Bank Rasipuram bearing No.657002 dated 28.11.2002. The complainant presented the cheque for collection at his account maintained in Rasipuram Town Co-operative Bank on 11.12.2002. The cheque bounced with endorsement "Exceeds arrangements and payment stopped by the drawer." The complainant went to the Office of the accused persons and informed about the dishonouring of the cheque and demanded cash. The accused persons assured to give the money. Next day the accused persons along with three others by name Paranthaman, Dhanapal (Advocate) and Narashiman (Advocate) came to the complainant house and asked him to come over to the Lorry Owners Association Office with the cheque and get back the cheque amount. Believing their words, the complainant went to the Lorry Owners Association Office. They got the cheque and bank intimation slip from the complainant and thereafter, informed him that the Manager of the Petrol Bunk has passed away, therefore, without reconciling the accounts, they cannot give the cheque amount. Under threat and force, the original cheque and bank intimation slip was taken away by the accused persons from the complainant. Through one Chinnaraj, the complainant tried to negotiate with the accused persons to get his money, but his attempt failed. Hence, complaint to Rasipuram police was lodged on 14.12.2002. The police took up the complaint for enquiry and gave C.S.R on 16.12.2002. During the enquiry, the accused persons handed over the original cheque and the intimation slip to the Inspector of Police. Before initiating prosecution under Section 138 of Negotiable Instrument Act, statutory notice dated 21.12.2002 was caused to the accused persons calling upon them to pay the cheque amount or to face criminal prosecution. The accused persons gave evasive and false reply through their Lawyer. The accused persons denied any existing debt to discharge through



the said cheque. They alleged that the said cheque was stolen from their custody, on 10.12.2002 when the Office bearers and members of the Association were away to attend the funeral of one Sankar, Manager of the Petrol bunk.

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3. Since, the original cheque is not with the complainant, the private complaint was presented without the original cheque, along with a Miscellaneous Petition No.703 of 2003 under Section 91 of Cr.P.C for a direction to the Inspector of Police, Rasipuram, to produce the original cheque. The Inspector, took a stand that, he has handed over the cheque to the accused. Therefore, the complainant filed another Miscellaneous Petition No.848 of 2003 under section 91 of Cr.P.C., against the accused persons to produce the original cheque. The Learned Magistrate rejected the plea. The complainant approached the High Court in CrI.RC No.1161 of 2003 against the order passed by the Judicial Magistrate, Rasipuram in C.M.P.No.848 of 2003. The Hon'ble High Court, in the said revision passed the below order:-

"7. As far as the summoning of the cheque is concerned, the accused cannot be directed to raise evidence against himself. This is a case where the cheque was with the accused and the police have seized and handed it over to the accused. In such circumstances the accused is bound to produce the cheque before the Court. Therefore, the petitioner is at liberty to file a fresh petition before the Court praying for a direction that the Inspector of Police should seize the cheque and produce it before the Court. In case of the cheque has not been produced or if it has been destroyed by the accused the complainant is at liberty to continue the case on the basis of the Xerox copy. In view of Section 60 of the Evidence Act, when the property is in the hands of the adverse party it is open for the petitioner to mark the Xerox copy.

8. With these observations, the revision is disposed of."

4. Thereafter, the private complaint was taken on file and numbered as C.C.No.408 of 2003 on the file of Judicial Magistrate Court, Rasipuram. The complainant, the Manager of the Canara Bank Rasipuram (accused Bank) and the Manager of the Rasipuram Town Co-operative Bank (complainant Bank) were examined as witnesses for complainant. 18 exhibits were marked as Ex.P-1 to Ex.P-18. On the side of the accused, the stop



payment notice given to the bank was marked as Ex.D-1.

5. The Trial Court found both the accused guilty of offence under section 138 of Negotiable Instrument Act, by judgment dated 06.09.2006 made in C.C.No.408 of 2003 on the file of the Judicial Magistrate, Rasipuram, sentencing them to undergo one year S.I with fine of Rs.5,000/- in default to undergo 3 months S.I each.

6. Aggrieved by the judgment of conviction and sentence, the accused persons filed Appeal before the Additional Session Judge at Namakkal in C.A.No.53 of 2006. The Appellate Court confirmed the Trial court judgment of conviction and sentence.

7. The Learned Counsel for the revision petitioner contended that, the Courts below failed to appreciate the evidence properly. It erred in holding the accused persons guilty of offence under section 138 of Negotiable Instrument Act, even though the complainant failed to prove the debt and due execution of the cheque. The order of the Hon'ble High Court passed in Crl.R.C.No.1161 of 2003, wrongly understood by the Courts below. Without production of the original cheque, the Courts below had entertained the complainant and erroneously convicted. The accused persons had rebutted the presumption of liability by categorically denying the borrowing and issuance of cheque. The cheques were stolen from the possession of the revision petitioners when they were not at the Office. When the due execution of the cheque denied, the presumption under Sections 118 or 139 of the Negotiable Instrument Act, does not get attracted.

8. The Learned Counsel for the Revision Petitioner vehemently contended that, the grave injustice caused to the revision petitioner by the Courts below by not considering the complainant case of lost cheque holding that it does not carry any merit and supported by evidence. Contrary to his own admission that the original cheque was seized by the Police from the accused person and handed over to him on 17.12.2002, the complainant approached this Court by way of revision petition and got an order behind his back. The said order is non est in eyes of law in view of the recent judgment rendered by Hon'ble Supreme Court in Subhash Sahebrao Deshmuk -vs- Satish Atmaram Talekar and others reported in 2020 (6) SCC 625. Further, the complainant did not discharge his initial burden of money transaction between him and the revision petitioner or any other existing liability.

9. To buttress the said point, the following judgments were relied by the Learned Counsel for the revision petitioner



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1. Vijay vs. Laxman and another reported in 2013 (3)

2. Basalingappa vs. Mudibasappa reported in 2019 (5)

10. Heard the Learned Counsel for the revision petition.

11. The Point for consideration in this revision is whether there is any illegality in the judgment of the Courts below?

12. These two judgments mentioned above deals about drawing of presumption under Section 118 and 139 of Negotiable Instrument Act and how the said presumption can be rebutted. The standard of proof for the prosecution is to prove the guilt beyond reasonable doubt and for the accused, the standard of rebuttal on preponderance of probability.

13. In Basalingappa (cited supra), the principles regrading presumption are enumerated as below:-

"25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.



25.5. It is not necessary for the accused to come in the witness box to support his defence."

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14. Applying the principles to the fact of the case, this Court finds that according to the revision petitioners, the subject cheques were kept in their Office and same was stolen by the complainant and one another person on 10.12.2002. However, no evidence to show action taken by the accused persons to recover the alleged stolen cheques. From Ex.D-1, we find that the accused have intimated their banker to stop payment of the cheque bearing No.657002 on 11.12.2002. However, from the bank statement of account marked as Ex.P-11, in the accused account only Rs.1,730.75 to his balance on the said date. It is also proved through witnesses by the complainant that two other cheques which were instructed to stop payment were presented and bounced for which one Thiru.Balakrishnan instituted criminal prosecution against the accused persons. In that case, though the accused persons took similar defence of theft of signed blank cheque, later compounded the offence in C.C.No.76 of 2003.

15. Therefore, it is clear from evidence, the accused persons have not cleared the standard of proof for rebutting the presumption under section 118 and 139 of Negotiable Instrument Act. Therefore, the Courts below have rightly held them guilty. In the revision petition, this Court finds no illegality or impropriety in the finding of the Courts below.

16. In Subhash Sahebrao Deshmuk -vs- Satish Atmaram Talekar and others reported in 2020 (6) SCC 625, the Hon'ble Supreme Court has held that, while exercising the power under revisional jurisdiction, before passing any order prejudicial to the accused or any other person, opportunity of being heard should be granted. The Learned Counsel referring to the order passed by this Court in Crl.R.C.No.1161 of 2003 dated 08.08.2003 is an order prejudice to them passed without being heard. First of all, the liberty to proceed based on photocopy of the cheque was granted subject to certain limitations. Further, this Court while passing order in Crl.R.C.No.1161 of 2003 obviously was conscious of the fact that the incriminating document namely the cheque prima facie proved to be with the accused. Since, the accused cannot be compelled to provide evidence against himself, the Court has passed the said order, the operative portion of which extracted in earlier part of the judgement. If the accused was really prejudiced by that order, they should have assailed it before the higher forum at the appropriate time.

17. This Court also had the opportunity of deciding the



Appeal Suit filed by these revision petitioners, challenging the money decree passed against them based on the lost cheque. The said Appeal Suit in A.S.No.988 of 2009 is dismissed confirming the decree passed against them by the Trial Court in O.S.No.97 of 2005 on the file of Additional District Judge (FTC) Namakkal. Therefore, taking note of the said fact and the delay in disposing the revision petition, this Court confirms the conviction but modify the sentence as fine of Rs.5,000/-each in default 3 months S.I. This Court confirms the conviction however sentence imposed by the Trial Court is modified:-

Conviction under Section	Sentence imposed by the Trial Court in C.C.408 of 2003 as confirmed by the Appellate Court in C.A.No.53 of 2006.	Sentence modified by this Court in CrI.R.C.No.1749 of 2007
Under Section 138-of N.I.	To undergo 1 year S.I with a fine of Rs.5,000/- each in default to undergo 3 months S.I	Confirms a fine of Rs.5,000/- each, in default 3 months S.I.

18. Accordingly, the Criminal Revision case is partly-allowed. The sentence passed by learned Additional District and Sessions Court/Fast Track Court, Namakkal, in C.C.No.408 of 2003 is modified. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Additional District and Sessions Judge,
Fast Track Court, Namakkal.



2. The Judicial Magistrate,
Rasipuram.

3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Manokaran, Advocate, SR.NO.6036

Criminal Revision Case No.1749 of 2007
& M.P.No.1 of 2007

CNR (CO)
PM/21/10/2021