IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.109 of 2021
and
Crl.M.P.Nos.2156 & 2157 of 2021

P.R.Ravichandran ... Petitioner

..vs..

G.R.Anandhakrishnan ... Respondent

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the records pertaining to C.A.No.34 of 2016 on the file of the IV Additional District and Sessions Judge, Coimbatore in C.C.No.70 of 2013, dated 04.03.2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level II, Coimbatore and set aside the dismissal order dated 23.01.2020.

For Petitioner : Mr.S.Anbazhagan
for Mr.G.Ashok Kumar

O R D E R

This Criminal Revision Case has been filed against order dated 23.01.2020 in C.A.No.34 of 2016 on the file of the IV Additional District and Sessions Judge, Coimbatore.

2.According to the petitioner/accused, the respondent/complainant filed a private complaint under Section 200 Cr.P.C against him for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as 'N.I Act') before the learned Judicial Magistrate, Fast Track Court (Magisterial Level-II) Coimbatore and the same was taken on file in C.C.No.70 of 2013. After due enquiry, the learned Magistrate by an order dated 04.03.2016 convicted and sentenced the petitioner/accused under Section 138 of N.I Act. Aggrieved by the said order, the petitioner/accused filed an appeal in Crl.A.No.34 of 2016 on the file of the learned IV Additional

District and Sessions Court, Coimbatore and the learned Sessions Judge dismissed the appeal on 23.01.2020. Challenging the same, the present Criminal Revision Case.

3.The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.50,000/- on 31.01.2011 and Rs.80,000/- on 01.02.2011 from the complainant to meet out his domestic and business requirements and the petitioner issued a post dated cheque dated 06.08.2012 to the complainant to discharge his liabilities. When the respondent presented the cheque for collection on 07.08.2012, it was returned with an endorsement 'insufficient funds'. Thereafter, the complainant issued a statutory notice to the petitioner on 16.8.2012 and the petitioner sent a reply but did not come forward to settle the amount and therefore, a complaint was filed by the complainant/respondent.

4.1 The learned counsel for the petitioner would submit that the petitioner executed two duly signed cheques to the complainant towards security purpose and not to discharge his liabilities. Further, the petitioner has rebutted the presumption under Section 139 of N.I.Act. The petitioner has rebutted the presumption by making out probable defence, by marking a document, Ex.D1 i.e. Kutcha Note Book. However, the complainant/ respondent failed to prove that the cheque was given towards legally enforceable liability. The trial Court and the Appellate Court failed to appreciate the defence taken by the petitioner and simply convicted the petitioner/accused. He would further submit that once the petitioner/accused proved the transaction by way of filing document i.e. Ex.D.1, the onus shifts on the complainant and it is for the complainant to prove his case. However, both the Courts below have wrongly shifted the onus on the accused/petitioner.

4.2 The learned counsel for the petitioner would further submit that the petitioner/accused can prove his defence by way of preponderance of probability. The preponderance of probability can be done during the cross examination of the complainant. During the cross examination of the respondent, the petitioner marked Ex.D1 and put a suggestion before the respondent/complainant and the respondent also admitted the entries made in Ex.D1. Therefore, once the respondent/complainant admitted the entries made in Ex.D1, the petitioner/accused has rebutted the presumption. However, both the Courts below failed to appreciate the defence taken by the petitioner simply convicted the petitioner.

5.During the cross examination, the respondent/complainant has stated that Ex.D1 pertains to some other textile transactions, however, the trial Court failed to consider the same and shifted the onus on the petitioner/accused, which is against criminal law. Both the Courts below failed to consider the defence taken by the petitioner and simply convicted the petitioner, which warrants interference of this Court.

6.Since this Criminal Revision Case arises out of the concurrent findings passed in C.C.No.70 of 2013 confirmed in C.A.No.34 of 2016. This Criminal Revision Case is taken up for final disposal, without issuing notice to the respondent.

7.On a careful perusal of the entire materials available on record, it reveals that the petitioner/accused admitted the execution of the cheque and the signature found in the cheque is of the petitioner. The petitioner has admitted in the reply notice that he borrowed a sum of Rs.50,000/- from the respondent/complainant and repaid a sum of Rs.35,000/-, and hence, he is liable to pay the balance amount of Rs.15,000/-. Since the petitioner admitted the execution of the cheque, the petitioner has to prove that there is no legally enforceable debt.

8.It is settled proposition of law once the execution of cheque is admitted, Section 139 of N.I.Act mandates a presumption that the cheque was issued for discharge of legally enforceable debt or other liability. No doubt, the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence, wherein the existence of a legally enforceable debt or liability can be contested. The standard of proof for rebutting the presumption is not having as that of the complainant. Further, when the Trial Court and the Appellate Court had already appreciated the entire evidence and also given a finding, while exercising the revisional jurisdiction, this Court cannot re appreciate the evidence and take another view. Therefore, this Court has to see whether any perversity or infirmity in the order of the Court belows.

9.In the present case, the petitioner has admitted the execution of cheque, but he has stated that he rebutted the presumption by way of marking a document ExD1. Though in reply notice, the petitioner has not stated the existence of Ex.D1, whereas, the respondent/complaint has stated that Ex.D1 pertains to some other transactions. Hence, the petitioner has to prove that entries in Ex.D1 pertaining to the transactions for discharging the amount mentioned in the cheque. Therefore, both the Courts below rightly appreciated the entire evidence and given the finding and this Court cannot interfere with the findings of the Courts below, since there is no perversity. Further, both the Courts below rightly shifted the onus on the petitioner and hence, it is for the petitioner to rebut the presumption in the manner known to law.

10.In the light of the above facts, this Court does not find any perversity or infirmity in the order of the Courts below. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge,
   Coimbatore.

2. The Judicial Magistrate,
   Fast Track Court, Magisterial Level II,
   Coimbatore.

+1cc to Mr.G.Ashok Kumar, Advocate, S.R.No.15586.

Crl.R.C.No.109 of 2021
and
Crl.M.P.Nos.2156 & 2157 of 2021

LN(CO)
CSR 17.04.2021