IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 16.12.2020
Pronounced On: 19.01.2021

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl. R.C.No.12 of 2018
and
Crl.M.P.Nos.44 and 45 of 2018

Gunasekaran .. Petitioner

Vs.

Dhandapani .. Respondent

Prayer: This Criminal Revision petition is filed U/s 397 and 401 of Cr.P.C to call for the records pertaining to the Judgment dated 22.11.2017 passed in C.A.No. 47 of 2017 by the III Additional District Sessions Judge, Coimbatore confirming the Judgment dated 16.02.2017 passed in C.C.No. 318 of 2014 by the Judicial Magistrate, Fast Track Court at Magisterial Level - II, Coimbatore and set aside the same.

For Petitioner : Mr.C.D. Sugumar
For Respondent : Mr. N. Elayaraja

ORDER

This Criminal Revision case has been filed challenging the Judgment of the learned III additional District and Sessions Judge Coimbatore in C.A.No. 47 of 2017 which confirmed the Judgment passed by the learned Judicial Magistrate Fast Track Court at Magisterial Level - II, Coimbatore in C.C.No.318 of 2014.

2.The respondent filed a complaint u/s 138 of Negotiable Instruments Act against the petitioner, alleging that the petitioner issued a cheque for Rs.10,00,000/- bearing No.864936 dated 28.02.2014 drawn on South Indian Bank, Coimbatore which was given for discharging his liability arose out of business transaction. The respondent presented the cheque for collection to Syndicate Bank, Coimbatore on 01.03.2014 and it was returned on 04.03.2014 with and endorsement "funds Insufficient". The respondent issued a legal notice to the petitioner on 08.03.2014 demanding payment of cheque amount of Rs.10,00,000/- within 15 days from the date of receipt of the notice. The petitioner received the notice on 11.03.2014. Even after receiving the notice, the petitioner had neither paid the cheque amount nor caused any reply. Therefore,this case was filed.

3. After the accused entered appearance he was questioned with regard to the substance of the accusations alleged against him and the accused denied the accusations and demanded trial. During the trial P.Ws.1 to 3 had been examined and Exs.P.1 to Ex.P.8 were marked. The respondent was examined as P.W.1 and no documentary evidence was produced on the side of the petitioner. On considering the oral and documentary evidence produced before the trial court, the learned Judicial Magistrate Fast Track Court at Magisterial Level - II, Coimbatore found the petitioner guilty u/s 138 of Negotiable Instruments Act and convicted and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.10,000/- in default to pay the fine amount to undergo 2 months simple imprisonment. Against the said Judgment the petitioner preferred a criminal appeal No.47 of 2017 on the file of III Additional District and Sessions Judge, Coimbatore. The learned Judge found no reason to interfere with the Judgment of the learned Judicial Magistrate Fast Track Court at Magisterial Level - II, Coimbatore and confirmed the Judgment by dismissing the appeal. Against the dismissal of the criminal appeal the petitioner has come up with this criminal revision case.

4. The learned counsel for the petitioner submitted that the cheque in question was issued to the respondent before 2009 and it was given to

respondent in 2009 as a security for earlier loan transaction. Evidence of P.W.3 Manager proves that the cheque was issued in the year 2009. CTS Cheque was introduced in the year 2012- 2013 and the petitioner was using CTS cheques during the relevant period. Therefore, the cheque could not have been issued by the petitioner to the respondent in 2014. As already stated that the cheque which was given in 2009 as a security for a earlier transaction is used for filing this case. The respondent has not produced any materials to show that there was a legally enforceable debt or liability existing and towards the discharge of that legally enforceable debt or liability, this cheque had been given. The details of business transaction are not stated in the complaint. The respondent is not an income tax assesse. No materials produced to show that the respondent was in possession of liquid cash of Rs.10,00,000/- at the time of alleged business transaction. However, the learned counsel for the petitioner submitted that the courts below have not considered these aspects in proper perspective and wrongly convicted the petitioner accused and sentenced him to imprisonment. Therefore, the learned counsel for the petitioner prayed for setting aside the Judgment of the courts below and for acquitting the case.

5. Per contra, the learned counsel for the respondent submitted that the petitioner had taken destructively contradictory plea in projecting his case. When sending Ex.P.5 reply notice he said that he did not know, the respondent, his name and his occupation. He claimed that he did not know anything about the cheque concerned in the legal notice. It was also stated that the legal notice was issued with an aim to cheat the petitioner. In fact the respondent was warned of legal action for using forged documents. However, in a petition filed u/s 239 of Cr.P.C for discharging the petitioner from this case, the petitioner claimed that he and the respondent knew each other well and had been involved in business transaction for several years with him. The respondent said to have used the cheque of the petitioner with or without the knowledge of the petitioner for the business transaction. Now, the petitioner and respondent are not doing any business and the cheque which was taken by the respondent on a different occasion is used for filing this case after filing up the details. It is also submitted by the learned counsel for the respondent that even during the examination before the Court, the petitioner admitted the business transaction with the respondent. Assuming without admitting the petitioner had issued the cheque without filing up the details, it is open to the respondent to fill up the details and present it for collection. The contradictory stand taken by the petitioner and evidence produced in this case

clearly establishes that there was business transaction between the petitioner and the respondent in purchase of gold and in that business transaction the cheque in question was issued for discharging the liability of the petitioner without sufficient funds. The learned counsel for the respondent submitted that the courts below had properly appreciated the evidence and rightly convicted and sentenced the petitioner and prayed for confirming the Judgments of the Courts below and for dismissing this criminal revision case.

6. The point for consideration in this case are

1. Whether the courts below have not considered the aspects raised by the learned counsel for the petitioner, while deciding the case against the petitioner.

2. Whether the Judgment of the Courts below suffers from any illegality or impropriety incorrectness in convicting and sentencing the appellant u/s 138 of Negotiable Instruments Act.

7. It is seen from the oral and documentary evidence produced in this case that the petitioner did not deny the cheque and the dispute the signature in the cheque, rather he admitted that Ex.P.1 cheque belong to him and it has his signature. It is seen from the evidence of P.W.2, the Manager of Syndicate

Bank in which the respondent has account, that the cheque in question was presented for collection on 01.03.2014 and it was returned on 04.03.2014 for the reason that there was no sufficient funds. He produced account statement of the respondent as Ex.P.7. P.W.3 is the manager of South Indian Bank in which the petitioner has his account. He admitted Ex.P.1 Cheque was issued to the petitioner Gunasekaran and he produced the accounts statements of the petitioner from 02.07.2009 to 02.07.2014 as Ex.P8. As on 04.03.2014 the petitioner had only a sum of Rs.13/- in his account. Thus, it is clear from the evidence of P.Ws 1 to 3 and Exs.P1, P2, P7 and P8 that Ex.P1 cheque was issued by the petitioner and when this cheque was presented for collection, there was only a sum of Rs.13 /- available in his account as on 04. 03 .2014 and therefore, the cheque was returned for the reason that there was no sufficient funds. The perusal of the Judgment of the Courts below show that it is not as though the contentions now raised by the learned counsel for the petitioner was not considered by the courts below but, they had been elaborately discussed.

8.Though it is not clearly stated in the complaint as to the reason for the petitioner to borrow Rs.10,00,000/- it was said during the course of evidence in the form of proof affidavit, the petitioner requested the respondent on

16.02.2014 to lend a sum of Rs.10,00,000/- towards his business needs. On 20.02.2014 the respondent paid the petitioner a sum of Rs.10,00,000/- and for discharging that debt the cheque was issued on 28.02.2014. This case is more or less confirmity with the averments made in the complaint.

9. However, when it comes to the case of the petitioner/accused he had taken diametrically opposite position with regard to this case. Admittedly, he received Ex.P.3 notice. Served acknowledgment card is produced as Ex.P.4. In Ex.P.5 reply notice it was specifically alleged that the petitioner did not know the respondent and his business. It was further alleged that the petitioner did not know anything about the cheque transaction and the cheque was used for cheating the petitioner. The petitioner warned the respondent that action will be taken for using the forged document against him. It is clear from the reply notice that the petitioner had taken a definite stand that he did not know who the respondent was; what was his business and forged document is used for cheating the petitioner.

10. The petitioner had filed a petition u/s 239 of Cr.P.C before the trial court for discharging him from this case. Curiously he had taken altogether a different stand in this petition. He now said in the discharge petition that he

knew the respondent very well; they are acquaintance; they have business transactions between them for several years. Now they are not doing any business. The cheque was taken from the petitioner and used for filing this case. Even when the petitioner and the respondent were doing business, the respondent used petitioner's cheque for business transactions with or without the knowledge of the petitioner on several occasions. Ex.P.5 petitioner's notice categorically stated that he did not know the respondent and in Ex.P.6 petition he stated that he knew the respondent very well and they had been involved in business transactions for several years. This is a destructive plea, which shows that the petitioner is not speaking truth and he is lying about his relationship with the respondent.

11. During the course of his evidence, petitioner had spoken about the nature of business he had with the respondent. He stated that he was a gold smith and the respondent was in the business of selling gold. The petitioner used to buy gold from the respondent when he was doing his gold business from 2006 to 2009. After 2009 there was no transaction between the petitioner and the respondent. He knew only to sign in the cheque and he did not know how to write. The cheque given to the respondent is misused to file the case. However, it is seen from his evidence that he admitted what he has stated in

Ex.P.5 notice. He further stated that he did not give any complaint to the police with regard to the taking of his cheque and misuse by the respondent. He admitted that he did not inform his bank about the respondent taking his cheque. He admitted that he did not give any advertisement through news papers with regard to the respondent taking his cheque. When he was asked as to whether he had stated in the discharge petition that the respondent had used his cheque for several transactions with or without knowledge, he replied that he did not remember.

12. Entire analysis of the evidence of the petitioner shows that he has not come to court with clean hands. It is also clearly demonstrated before the court that he was speaking falsehood by taking contradictory position. But, one thing is clear from the own evidence of the petitioner that he was a gold smith and the respondent was selling gold and he used to buy gold from the respondent. It establishes the fact, the respondent is a man of sufficient means and that petitioner borrowed a sum of Rs.10,00,000/- from the respondent in gold business cannot be considered as out of ordinary. Though the respondent was cross examined by the petitioner nothing incriminating was elicited from him, rather the gold business between the petitioner and the respondent was established through the suggestions made with regard to the gold business. It

is suggested to the respondent that petitioner and the respondent were engaged in a real estate business and an empty cheque was given with the signature of the petitioner for purchasing land and that cheque is now used for filing this case. But to substantiate this version of the petitioner no acceptable evidence is produced by the petitioner.

13. With regard to the claim of the petitioner that from the year 2012, 2013 he was using only CTS cheques and it was not possible for him to issue the impugned cheque and that the respondent has not been assessed to income tax, when there is no denial from the petitioner that the cheque presented is his cheque and the signature in the cheque is his signature, we cannot presume that the cheque was not issued in 2014. Similarly, when it is admitted by the petitioner himself that the respondent is engaged in selling gold, it establishes the fact the respondent is a man possessed of means. Non-filing of income tax returns, may be a ground for prosecution under income tax, but it is not a ground for dismissal of this case. Negotiable Instruments Act raises a presumption that untill the contrary is proved the following presumptions can been made:

118. presumptions as to negotiable instruments -

until the contrary is proved, the following presumptions shall be made :-

(a) of consideration - that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.

(b) as to date - that every negotiable instruments bearing a date was made or drawn on such date;

(c) as to time of acceptance - that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity.

(d) as to time of transfer- that every transfer of a negotiable instruments was made before its maturity;

(e) as to order of indorsements - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp- that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course- that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence of fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

There is a presumption under Section 139 of Negotiable Instruments Act:

> *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.*

14. It is seen from the oral and documentary evidences and also the provisions of Sections 118 and 139 that there is a presumption in favour of the holder of the cheque that it was issued to discharge a debt or his liability. The respondent has sufficiently proved through oral and documentary evidence that the cheque in question was issued for discharging the debt of the petitioner. Therefore, this Court comes to the conclusion, that the respondent has proved the case against the petitioner about borrowal of a sum of Rs.10,00,000/- and issuance of the cheque in question for discharging the debt without sufficient funds and therefore he is liable to be convicted under section 138 of Negotiable Instruments Act.

15. The Courts below had rightly found the accused guilty u/s 138 of Negotiable Instruments and convicted him and imposed suitable sentence. This Court finds no reason to interfere with the Judgment of the Courts below. Accordingly the judgment of the learned III additional and sessions Judge in

Crl.A.No.47 of 2017 confirming the Judgment of learned Judicial Magistrate, Magisterial level, Coimbatore in C.C.No.3 of 2014 is confirmed and this criminal revision petition is dismissed. Consequently, the connected miscellaneous petitions are closed. The learned trial Judge is directed to issue warrant against the petitioner for undergoing the sentence.

19.01.2021

smn
Index : Yes /No
Internet : Yes/No
Speaking order/ Non Speaking order

To

1. The III Additional District Sessions Judge, Coimbatore
2. The Judicial Magistrate, Fast Track Court
at Magisterial Level - II, Coimbatore

G.CHANDRASEKHARAN,J.

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