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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2021
PRONOUNCED ON : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.103 of 2015

Velmurugan

... Petitioner/Accused

Vs.

Venugopal Krishnan

... Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the conviction and sentence of imprisonment of six months simple imprisonment and modifying the fine to the sum of Rs.1,00,000/- with default sentence for one month simple imprisonment by judgment dated 22.01.2015 made in C.A.No.31 of 2013 on the file of the learned II Additional District and Sessions Judge, Tindivanam confirming the conviction and sentence of imprisonment of six months simple imprisonment and compensation of Rs.2,00,000/- with default sentence of one month simple imprisonment by order dated 13.03.2013 made in C.C.No.971 of 2008 on the file of the Court of Judicial Magistrate No.I, Tindivanam.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mrs.R.Meenal

JUDGMENT

(The case has been heard through Video Conference)

This Criminal Revision Case has been filed against the conviction and sentence of imprisonment of six months simple imprisonment and modifying the fine to the sum of Rs.1,00,000/- with default sentence for one month simple imprisonment passed by the learned II Additional District and Sessions Judge, Tindivanam, in C.A.No.31 of 2013, dated 22.01.2015, confirming the conviction and sentence of imprisonment of six months simple imprisonment and compensation of Rs.2,00,000/- with default sentence of one month simple imprisonment passed by the learned Judicial Magistrate No.I, Tindivanam, in C.C.No.971 of 2008, dated 13.03.2013.

2.The convicted accused is the revision petitioner herein.



3.This case is filed when the revision petitioner was in jail. Subsequently, the revision petitioner/accused was enlarged on bail by this Court in CrI.M.P.No.1 of 2015 in CrI.R.C.No.103 of 2015, on 10.02.2015.

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4.Brief facts of the case:

(a).The respondent herein is the private complainant and he has preferred a complaint in C.C.No.971 of 2018 under Section 200 of Cr.P.C read with Section 138 of the Negotiable Instruments Act, before the Court of Judicial Magistrate No.I, Tindivanam, alleging that on 10.05.2008 the revision petitioner herein/accused borrowed a sum of Rs.4,00,000/- from the respondent herein/complainant, promising to repay the same within two months. The respondent herein/complainant has approached the revision petitioner herein/accused after two months for repayment of loan and the accused gave Karur Vysya Bank cheque/Ex.P1, dated 29.07.2008 for a sum of Rs.4,00,000/- and requested the respondent herein/complainant to encash the cheque after three months.

(b).Hence, the respondent herein/complainant had presented the cheque for collection with his banker Karur Vysya Bank, Tindivanam and the same was returned by Ex.P2/Memo stating as insufficient funds. Hence, the respondent herein/complainant has sent a legal notice/Ex.P3, dated 06.11.2008 and the same was received by the accused through acknowledgement card/Ex.P4, dated 11.11.2008 and the accused sent a reply/Ex.P5, dated 14.11.2008.

(c).After observing the formalities, on behalf of the respondent herein/complainant viz., Venugopal Krishnan, he himself was examined as PW1 and one Suresh was examined as PW2 and marked Exs.P1 to P5. On behalf of the revision petitioner herein/accused, he himself was examined DW1 and no document has been marked. After full trail on hearing both sides, the learned Judicial Magistrate No.I, Tindivanam, has convicted the accused and imposed the sentence on the accused as stated supra and the above said fine amount of Rs.2,00,000/- was ordered to be given as compensation to the complainant.

(d).Aggrieved against the said order, the accused has preferred an appeal in CrI.A.No.31 of 2013, before the learned II Additional District Court, Tindivanam, and the same was dismissed on 22.01.2015 and he was arrested and remanded to the Judicial Custody to undergo the sentence and thereafter, this revision is filed from the Jail as stated supra.

5.Heard both the learned counsels and perused the materials placed on record.



6. On a perusal of the evidence of PW1 coupled with the documentary evidences viz., Exs.P1 to P5, it is seen that the respondent herein/complainant has stated in his evidence that on 10.05.2008, the revision petitioner herein/accused borrowed a sum of Rs.4,00,000/- from the respondent herein/complainant, promising to repay the same within two months. The respondent herein/complainant has approached the revision petitioner herein/accused after two months for repayment of loan and the accused gave Karur Vysya Bank cheque/Ex.P1, dated 29.07.2008 for a sum of Rs.4,00,000/- and requested the respondent herein/complainant to encash the cheque after three months. Hence, the respondent herein/complainant had presented the cheque for collection with his banker Karur Vysya Bank, Tindivanam and the same was returned by Ex.P2/Memo stating as insufficient funds. Hence, the respondent herein/complainant has sent a legal notice/Ex.P3, dated 06.11.2008 and the same was received by the accused through acknowledgement card/Ex.P4, dated 11.11.2008 and the accused sent a reply/Ex.P5, dated 14.11.2008, by using the blank signed cheque. The Trial Court based upon the evidence, has come to the conclusion that the respondent herein/complainant has discharged his burden and hence, he has entitled for presumption under Section 139 of Negotiable Instruments Act.

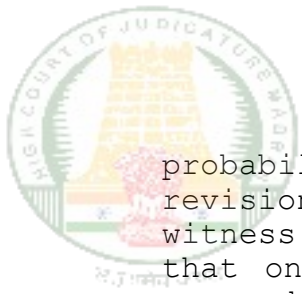
7. On the point whether the revision petitioner herein/accused rebutted the presumption, it is pertinent to analyse the oral evidence of DW1, wherein, the accused/revision petitioner herein has admitted that he had issued the cheque Ex.P1 to one Krishnamoorthy. The revision petitioner herein/accused has admitted the issuance of cheque for the existing liability and hence, there is a presumption under Section 139 of Negotiable Instrument Act that it has been issued for the discharge of debt or liability. On the other hand, the learned counsel for the accused argued that the initial burden is on the complainant to prove that there is legally enforceable debt and that has not been proved in this case.

8. As per the decision reported in 2021 (1) LW Cr1 450 - (P.Sreerangan Vs. S.Sivasankar), burden of proof on the part of the accused is that preponderance of probability.

9. Further, the learned counsel for the revision petitioner would rely upon the following judgments reported in:

- (a). (2019) 5 SCC 418 - Basalingappa Vs. Mudipasappa
- (b). (2013) 3 SCC 86 - Vijay Vs. Laxman & another
- (c). (2008) 1 SCC 258 - K.Prakashan Vs. P.K.Surenderan

10. Now this Court has to see whether the revision petitioner herein/accused has proved his case by preponderance of



probability as noted supra. Except the oral evidence of the revision petitioner herein/accused there is no independent witness or documentary evidence to substantiate the alleged plea that one Krishnamoorthy has lend money of Rs.1,00,000/- to the accused and the cheque was only issued to him namely signed blank cheque.

11.On a perusal of the judgment of the Trial Court this Court finds that the revision petitioner herein/accused has filed a petition to examine Krishnamoorthy, an independent witness, who knows the transaction and the same was dismissed. For the reasons, best known the revision petitioner herein/accused has not challenged that order either by way of appeal or revision petition, assumes significance.

12.In the absence of any supporting evidence either from Krishnamoorthy or from the third person, both the Courts below have disbelieved oral evidence of DW1/accused. As per Ex.P5/reply notice, it is seen that it is a specific case of the revision petitioner herein/accused that he had borrowed a sum of Rs.1,00,000/- from Krishnamoorthy and repaid Rs.75,000/- also. In the absence of any probablised suggestive case of the defence, both the Courts below have rightly come to the conclusion that the defence has failed to probablise the suggestive case and the concurrent finding rendered by both the Courts below does not suffer from any illegality or irregularity, warranting interference at this revision stage.

13.Yet another point that was advanced by the learned counsel for the revision petitioner herein/accused is that the revision petitioner has issued only blank signed cheque. As per the Section 20 of the Negotiable Instruments Act, the owner of the cheque is empowered to fill up the document and that being the case, both the courts below has rightly come to the conclusion that such stand cannot be allowed as per the provisions of the Act.

14.On a perusal of the cross-examination of PW1, there is no question challenging the cheque or any suggestion to PW1 that cheque was subsequently filled up and hence, taking into consideration of the compliance of the mandatory provisions of the Negotiable Instruments Act, issuance of legal notice and launching of the prosecution both the Courts below have concurrently held that the revision petitioner herein/accused has failed to probablize the suggestive case and proposed case has not been proved to the preponderance of probability level. Accordingly, laid conviction and sentence. Hence, conviction passed by the Trial Court is hereby confirmed. The sentence of six months imposed by the Trial Court is reduced to three months, however, compensation awarded by the Trial Court as



confirmed by the Appellate Court is hereby confirmed to the limited extent.

15.Hence, this Criminal Revision Case stands partly allowed and modified the sentence to the extent as indicated above.

Sd/-
Assistant Registrar(CO-IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The II Additional District and Sessions Judge,
Tindivanam.
2. The Judicial Magistrate No.I,
Tindivanam.

+1cc to Mrs.R.Meenal, Advocate, S.R.No.36533
+1cc to Mr.NS.Sivakumar, Advocate, S.R.No.36489

Cr1.R.C.No.103 of 2015

SJ(CO)
CT(23/08/2021)