IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM:

THE HON'BLE Mr.JUSTICE P.VELMURUGAN

Criminal Revision Case No.436 of 2021
and Crl.M.P.Nos.7122 and 7123 of 2021

1. Shree Annalakshmi Communications
   Rep.by its Proprietor
   Mr.K.Balasubramaniam.

2. K.Bala Subramaniam ... Petitioners

..vs..

1. State Represented by
   Public Prosecutor.

2. P.Sivasamy ... Respondents

Criminal Revision Case filed under Section 397 and 401 Cr.P.C, to set aside the judgment dated 11.1.2021 passed in C.A.No.19 of 2020 by the First Additional District and Sessions Judge, Coimbatore confirming the judgment dated 11.12.2019 passed in C.C.No.243 of 2014 by the Judicial Magistrate, Fast Track Court No.1 @ ML, Coimbatore and allow this revision.

For Petitioners	:	Mr.C.D.Sugumar
For Respondents	:	Mr.S.Sugendran Government Advocate (Crl.Side) for R1

O R D E R

This Criminal Revision Case has been filed against order dated 11.1.2021 passed in C.A.No.19 of 2020 by the learned First Additional District and Sessions Court, Coimbatore.

2.According to the petitioners/accused, the 2nd respondent/ complainant filed a private complaint under Section 200 Cr.P.C 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 No.I, Magisterial Level, Coimbatore and the same was taken on file in C.C.No.243 of 2014. After due enquiry, the learned Magistrate by an order dated

11.12.2019 convicted and sentenced the petitioners/accused under Section 138 of N.I Act. Aggrieved by the said order, the petitioners/accused herein filed an appeal in Crl.A.No.19 of 2020 on the file of the learned First Additional District and Sessions Court, Coimbatore. By order dated 11.1.2021, the learned Sessions Judge dismissed the appeal and confirmed the judgment of the trial Court. Challenging the same, the present Criminal Revision Case.

3.The case of the 2nd respondent/complainant is that the petitioners/accused borrowed a sum of Rs.2,00,000/- from the 2nd respondent/complainant on 03.12.2011 to meet their business expenses and executed a promissory note in his favour and agreed to repay the amount with interest @ 24% per annum. After receiving the said amount, the accused failed to repay the same and hence, on repeated demands made by the complainant, the accused issued a cheque to the complainant to discharge the principal amount and promised to honour the same. When the complainant presented the cheque for collection on 12.09.2012, it was returned with an endorsement 'Exceeds arrangements' and the factum of the dishonour was informed to the accused and on their request, the complainant presented the same on 15.10.2012 and again the same was returned for the same reason. Thereafter, the complainant issued a statutory notice to the petitioners on 30.10.2012. After receiving the said notice, the accused neither sent reply nor paid the amount. Hence, the 2nd respondent/ complainant filed a complaint against the petitioners/accused.

4.The learned counsel for the petitioners would submit that the 2nd respondent is running a chit fund company and the petitioners are subscribers of the 2nd respondent's chit fund company. The petitioners issued cheques only for security purpose, at the time of receiving chit prize amount. After completion of the cheque period, the 2nd respondent did not return the cheque and filed a false case against the petitioners. He would further submit that the cheque in question was issued to the complainant in the year 2011 itself, whereas, the 2nd respondent has stated that the cheque was issued in the year 2012. However, the trial Court and the Appellate Court failed to appreciate the defence taken by the petitioners and simply convicted the petitioners/accused.

5. Heard both sides and perused the materials available on record.

6.Since this Criminal Revision Case arises out of the concurrent findings passed in C.C.No.243 of 2014 confirmed in C.A.No.19 of 2020, this Criminal Revision Case is taken up for final disposal, without issuing notice to the 2nd respondent.

7.On a careful perusal of the entire materials available on record, it reveals that the petitioners/accused admitted the execution of the cheque and the signature found in the cheque is of the petitioners and also they admitted that the cheque in question was issued for the purpose of security. Since the petitioners admitted the execution of the cheque, they have 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 there is any perversity or infirmity in the judgments of the Court belows.

9.In the present case, the petitioners/accused have admitted the execution of cheque and it is for them to rebut the presumption that the cheque has not been issued for legally enforceable debt. After receiving the return memo from the Bank, the 2nd respondent issued a statutory notice to the petitioners, but, the petitioners have not sent any reply to that notice. Though, it is not mandatory in criminal cases that the accused has to send reply, he can take a defence even by way of cross examination of prosecution witnesses. In the present case, the petitioners admitted the execution of the cheque and also they have admitted that the same has been issued in the year 2011 and not issued in the year 2012. Further, the petitioners admitted that the subsequent cheques were honoured, whereas, the disputed cheque has not been dishonoured, which itself clearly shows that the petitioners executed the cheques. Therefore, both the Courts below rightly appreciated that the petitioners admitted the execution of cheques and also admitted that the cheques were issued for the purpose of discharging the chit amount. However, the petitioners have not produced either a counter foil of cheque leaf book and also not produced any documents that they are the subscribers in the 2nd respondent's chit fund company and they issued cheque only for security purpose and they have paid all the subscription amount, but, the 2nd respondent failed to return the cheque. If at all the petitioners gave cheques to the 2nd respondent for security purpose, after clearance of chit subscription and if the respondent not returned the cheque in the year 2011, immediately, the petitioners could have taken action against the respondent to get back the discharged cheque, if they failed to return the same they should have taken legal action to get back the cheque, which were given for security purpose. However, after receiving statutory notice, the petitioners neither sent any reply nor filed any complaint. 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 petitioners 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 VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Judicial Magistrate,
   Fast Track Court No.1 @ ML, Coimbatore.

3. State Represented by
   Public Prosecutor.

4. The Superintendent, Central Prison, Coimbatore.

5. The Public Prosecutor, High Court, Madras.

6. The Section Officer,
   Criminal Section, High Court, Madras-104.

+1cc to Mr.C.D.Sugumar, Advocate, S.R.No.37260

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GSM(CO)
CS/20/09/2021