IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2021

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

Crl.R.C.No.1261 of 2016
and
Crl.M.P.Nos.11339 & 11341 of 2016

Chitra .. Petitioner

Vs.

V.S.Vijayakumar .. Respondent

PRAYER : Criminal Revision Cases have been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the conviction and sentence imposed on the petitioner by the I Additional District and Sessions Court, Erode in C.A.No.16 of 2016 dated 27.09.2016 confirming the Judgment passed by the learned Judicial Magistrate, Fast Track Court-I, Erode in S.T.C.No.143 of 2013 dated 07.01.2016.

For Petitioner : Mr.L.Prabakaran

For Respondent : Mr.A.Thiyagarajan

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned I Additional District and Sessions Judge, Erode, dated 27.09.2016 made in C.A.No.16 of 2016.

2. This case has arisen out of a private complaint given by the respondent/defacto complainant on the allegations that the petitioner/accused had borrowed a sum of Rs.2,00,000/- from him on 27.10.2012 and issued a cheque dated 27.11.2012 on the same day for the said amount drawn on Oriental Bank of Commerce, Erode. When the cheque was presented for collection on 28.11.2012, it was returned as "Account Closed". After issuing a statutory legal notice and observing the legal mandates, the defacto complainant has preferred the private complaint against the petitioner/accused for committing an offence under Section 138 r/w 142 of the Negotiable Instruments Act.

3. During the course of trial, on the side of the defacto complainant, one (1) witness was examined as PW.1 and six (6) documents were marked as Ex.P1 to Ex.P6. On the side of the petitioner/accused, three (3) witnesses were examined as DW.1 to DW.3 and nine (9) documents were marked as Ex.D1 to Ex.D9.

4. After the conclusion of the trial and on consideration of the materials available on record, the learned trial Judge has found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo 6 months Simple Imprisonment and imposed a fine of Rs.5,000/-; in default to undergo Simple Imprisonment for 2 weeks. Against the said conviction, the petitioner/accused has filed an appeal in C.A.No.16 of 2016 before the learned I Additional District and Sessions Judge, Erode, which was dismissed by confirming the judgment of the trial Court. Aggrieved over that, this Criminal Revision Case has been filed by the petitioner/accused.

5. Heard the learned counsel for the petitioner/accused and the learned counsel for the respondent/defacto complainant.

6. The learned counsel for the petitioner/accused submitted that the impugned cheque was not issued for any legally enforceable debt, but it was issued as security for the transaction between his mother and the mother of the complainant in connection with some Self Help Group activities; the mother of the defacto complainant has obtained a Power of Attorney in her favour from the son of the accused and by virtue of Power of Attorney, she has sold the property subjected in the Power of Attorney in favour of her husband; subsequent to the complaint, two police complaints have been given by the petitioner/accused against the defacto complainant and with these documents he has rebutted the initial presumption under Section 139 of the Negotiable Instruments Act. The learned trial Judge and the appellate Judge have rightly advented to appreciate the preponderance of probabilities in favour of the petitioner/accused and convicted her.

7. The learned counsel for the respondent/defacto complainant submitted that except the self assertive statement of the petitioner/accused and her son, no independent evidence has been let in to show that the documents produced by the petitioner/accused have got any connection in the said transaction; the police complaints given by the petitioner/accused are subsequent to the complaint; the Courts below have rightly dealt with the evidence on record and appreciated in right perspective and found the accused guilty and the criminal revision case has to be dismissed.

8. Points for consideration:

Whether the finding and judgment of the lower appellate Court suffer from any infairness, impropriety or illegality?.

9. The fact that the cheque was issued by the petitioner/accused was not in dispute. The signature found in the cheque was also not disputed. But the only contention of the petitioner/accused is that the cheque was issued by way of security for same transaction she had with the mother of the defacto complainant and that has been misused. He further submitted that the accounts has been closed in year 2010 itself and the cheque has been misused. It is settled position of law that once the execution of the cheque is admitted, the presumption that the cheque was issued for a legally enforceable debt has been given goes in favour of the holder of the cheque as per Sections 118 and 139 of the N.I.Act. However the said presumption is subjected to rebuttal, if at all, the petitioner/accused has got a valid defence. No doubt, the cheque was issued on 27.11.2012 and it was returned as "account closed". The very allegation of the complaint itself is that the cheque was issued after the account was closed and thereby the accused had committed an offence under Section 138 of the N.I.Act. But it was contended by the petitioner/accused that it is not possible for him to issue the cheque relating to an account already closed by him.

10. It is the responsibility of the accused to recover the cheque from the custody of the complainant, if it had been given to the complainant by way of security for some other reasons. It is seen from the evidence of DW.2 that he had executed a Power of Attorney in favour of the mother of the complainant and in pursuance of that the subject matter of the power deed was transferred to one Subramani. When the Power of Attorney is said to have been executed by giving the power agent to transfer the properties, no conveyance made by the power agent by virtue of the said power can be questioned later by the person who gave the power. Further, it is not established by the petitioner/accused in what way the loan amount alleged to have been availed by his mother from the mother of the defacto complainant is relevant to the impugned cheque transaction. Further it is observed by the learned trial Judge that DW.2 is not the own son of the accused.

11. The rebuttal proof cannot be mere statement of the petitioner/accused or her witnesses and they should have some relevance to the impugned transaction. The documents produced by the petitioner/accused would only show that the defacto complainant and the petitioner/accused are already known to each other and they had transactions between themselves. The contrary proof offered by the accused to disprove the initial presumption can be either through the materials produced by the petitioner/accused himself or by way of exposing improbability in the case of the respondent. The

learned trial Judge has rightly observed that in none of the documents namely the Power of Attorney or in the sale deed, it is mentioned that the power documents are executed only as an arrangement for discharging the earlier debt due to the power agent or her family members. Unless those facts are established before the Court, the reliability of the documents produced by the defence cannot be presumed or taken as proof.

12. No doubt the petitioner/accused has given two police complaints. But they are only subsequent to filing of this private complaint. When the proceedings are pending before the Court, those complaints would not carry any weight to draw the probabilities in favour of the petitioner/accused. But it is not the case of the petitioner/accused that the respondent/complainant did not have financial wherewithals to lend a sum of Rs.2,00,000/-. But the only contention of the petitioner/accused is that there is no necessity for him to get the loan amount and whatever loan amount he got have already been discharged. But to substantiate the above contention, no acceptable evidence has been produced before the Court. I feel that the Courts below have rightly appreciated the evidence on record and allowed the initial presumption to become conclusive proof, in the absence of rebuttal proof and found the accused guilty. Hence, the judgment of the lower appellate Courts does not require any interference and the criminal revision case is liable to be dismissed.

13. In the result, the Criminal Revision Case stands dismissed. Consequently, the connected criminal miscellaneous petitions are also dismissed. The judgment of the learned Judicial Magistrate, Fast Track Court-I, Erode, dated 07.01.2016 in S.T.C.No.143 of 2013 is confirmed. The trial Judge is directed to issue Non Bailable Warrant for securing the accused and commit him to prison to undergo the sentence.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The I Additional District and Sessions Judge,
Erode.

2.The Judicial Magistrate,
Fast Track Court-I, Erode.

3.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.T.Balaji, Advocate SR. No.64065
+1cc to Mr.C.Prabakaran, Advocate SR. No.64425

Crl.R.C.No.1261 of 2016
and
Crl.M.P.Nos.11339 & 11341 of 2016

MT (CO)
PR (25/02/2022)