

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
06.09.2021

ORDERS PRONOUNCED ON
06.10.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1574 of 2016
and
Crl.M.P.Nos.12878 & 12880 of 2016

Prakasam

..Petitioner/Accused

Vs.

D.Senthilkumar

..Respondent/Complainant

PRAYER : Petition filed under Sections 397 and 401 of the Criminal Procedure Code, praying to set aside the conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore, in C.A.No.248 of 2015, dated 18.10.2016, confirming the conviction and sentence made in C.C.No.85 of 2012, dated 23.11.2015 on the file of the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, convicting the petitioner to undergo simple imprisonment for one year and to pay a fine of Rs.7,500/- in default to undergo simple imprisonment for two months.

For Petitioner : Mr.M.Arun Kumar
for Mr.K.S.Karthik Raja

For Respondent : Mr.Poornam Chopra
for M/s.Ramesh Kumar Chopra

ORDER

The matter is heard through "Video Conference".

This Criminal Revision Case has been preferred by the revision petitioner/accused, praying to set aside the conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore, in C.A.No.248 of 2015, dated 18.10.2016, confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.II (Magisterial



Level), Coimbatore, in C.C.No.85 of 2012, dated 23.11.2015.

2. The respondent herein/complainant had filed a private complaint under Section 200 of Cr.P.C., against the revision petitioner/accused to prosecute him for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file in C.C.No.85 of 2012 by the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore. After contest, the learned Judicial Magistrate, Coimbatore, by his judgment dated 23.11.2015, convicted and sentenced the revision petitioner/accused to undergo simple imprisonment for one year and to pay a fine of Rs.7,500/- and in default, to undergo simple imprisonment for two months.

3. Aggrieved over the said order of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, the revision petitioner/accused has preferred an appeal in C.A.No.248 of 2015 before the learned V Additional District and Sessions Judge, Coimbatore.

4. The respondent herein/complainant has filed the case in C.C.No.85/2012 before the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, stating that the revision petitioner/accused had borrowed a sum of Rs.12,00,000/- from the complainant and issued Ex.P1-cheque and on presentation, the same was returned as "Insufficient funds". After observing the legal formalities, the complainant has filed the above complaint.

5. The private complainant examined himself as P.W.1 and marked documents Exs.P.1 to P.5. P.W.1 specifically deposed that the revision petitioner/accused has approached the respondent/complainant for a loan of Rs.12,00,000/- for his business purpose for a period of one month and on that basis, the respondent had given a sum of Rs.12,00,000/- by way of cash at his residence and for the same, the revision petitioner/accused had issued Ex.P.1-cheque bearing No.395662, dated 01.06.2012, for the said sum of Rs.12,00,000/- assuring that the same would be duly honoured when presented for collection and that when the said cheque was presented for collection on 01.06.2012 through his bankers viz., M/s.IndusInd Bank Ltd., R.S.Puram Branch, Coimbatore, the same was dishonoured with endorsement "Account Closed".

6. The respondent herein as complainant had filed the complaint on the ground that the revision petitioner/accused had issued Ex.P.1-cheque bearing No.395662 drawn on M/s.ICICI Bank, Ram Nagar Branch, Coimbatore, for a sum of Rs.12,00,000/- towards discharge of the amount due to the respondent on account of the loan borrowed by him on 30.04.2012 and as the same was



dishonoured when presented for collection through his bankers M/s.IndusInd Bank, R.S.Puram Branch, the statutory notice dated 05.06.2012 was issued and in spite of receipt of the same, the accused had neither sent any reply nor paid the cheque amount and thereby, committed the offence under Section 138 of the Negotiable Instruments Act. So is the proof affidavit.

7. The suggestive case of the accused is that he had never borrowed any sum, much less, a sum of Rs.12,00,000/- on 30.04.2012 from the complainant and the complainant is utter stranger to him. The complainant had no source of income to lend such an amount and the complainant has not received any document at the time of alleged lending of the claim amount.

8. After perusing the chief and cross-examination of P.W.1 and the documentary evidence Exs.P.1 to P.5 coupled with the fact that the accused has not denied the signature found in Ex.P.1-cheque and nor it was disputed through the cross-examination of P.W.1 that the cheque does not belong to the accused and hence, this Court comes to the conclusion that the revision petitioner having satisfies the basic ingredients under Section 139 of the Negotiable Instruments Act is entitled to statutory presumption that Ex.P.1-cheque is supported by pre-existing legally enforceable debt and now, it is for the turn of the accused to probabalise the suggestive case upto the preponderance level.

9. Admittedly, it is not necessary to the revision petitioner/accused to step into the witness box and establish his defence case and he can do so by calling materials from the documents or oral evidence let in by P.W.1. It is needless to say that in an attempt to rebut the statutory presumption, he can do so by relying upon necessary answer in the cross-examination. A bare denial of non passing of consideration cannot be termed as probabalised his suggestive case.

10. As stated supra, the suggestive case of the accused is that P.W.1/complainant is not having sufficient means to advance a sum of Rs.12,00,000/- and the revision petitioner/accused has not received any amount as stated by P.W.1 and the cheque produced in this case is not issued to the revision petitioner in discharging a legally enforceable debt. Except bare suggestion, no attempt has been made to probabalise the suggestive case. Ex.P.1-cheque is that of the accused. Signature is also duly accepted.

11. In the decision reported in 2010 (3) Crimes 40 (SC) [Rangappa Vs. Sri Mohan], the Hon-ble Apex Court has categorically held that the presumption mandated by Section 139 of the Negotiable Instruments Act does indeed include the

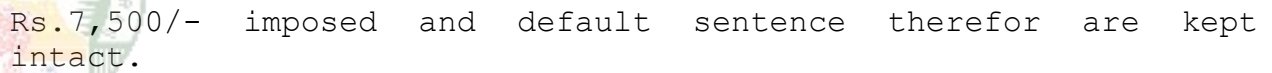


existence of a legally enforceable debt or liability. During the cross-examination, P.W.1 was confronted with regard to passing of consideration. P.W.1/complainant has categorically stated that on payment of Rs.12,00,000/- being collected by him from his relatives, he has handed over the said amount to the accused and in turn, the accused gave the cheque-Ex.P.1. P.W.1 has admitted that he has not received any document evidencing such payment under Ex.P.1-cheque given by the accused. Though the revision petitioner/accused would contend that the cheque was given to some one, no witnesses have been examined as to whom he has given Ex.P.1-cheque or he has neither named him nor examined the person except for bare denial. In the absence of any positive evidence or any supporting evidence, the trial Court has rightly come to the conclusion that the accused has miserably failed to probabalise the suggestive case.

12. On the contrary, Ex.P.1-cheque and Ex.P.3-legal notice issued in his behalf and the accused has not even gave a reply nor stepped into the witness box nor made any suggestion as to whom the cheque was given during the cross-examination of P.W.1 and hence, thought not individually however, cumulative of the above factors, both the Courts below have rightly come to the conclusion that the accused has not even stated as to how the cheque marked by the complainant as Ex.P.1 came into existence and accordingly, held that the revision petitioner/accused has miserably failed to rebut the presumption to the level of preponderance of probabilities. Accordingly, both the Courts below have held that the revision petitioner/accused has committed an offence under Section 138 of the Negotiable Instruments Act and laid the conviction therefor.

13. Accordingly, I find that both the Courts below, based upon the guidelines issued by the Hon'ble Apex Court in the decision reported in 2010 (3) Crimes 40 (SC) [Rangappa Vs. Sri Mohan], have rightly come to the conclusion that the respondent herein/private complainant is entitled for statutory presumption and in the absence of any positive evidence in support of the suggestive case, both the Courts below have rightly come to the conclusion that the revision petitioner/accused has failed to probabalise the suggestive case and hence, the conviction passed by the trial Court is hereby confirmed.

14. The learned counsel for the revision petitioner/accused was heard on the point of question of sentence. The case was instituted in the year 2012. Taking note of the long pendency of the case and the facts and circumstances of the case and also the economical status of the parties, the sentence of one year simple imprisonment imposed by the learned Judicial Magistrate, Fast Track Court No.II (Magisterial Level), Coimbatore, is reduced to six months simple imprisonment. The fine amount of



15. In the result, this Criminal Revision Case is partly allowed only to the extent indicated above in respect of sentence alone. Consequently, the connected M.Ps. are closed.

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Jr1

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

2. The Judicial Magistrate,
Fast Track Court No.II (Magisterial Level),
Coimbatore.

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.52618

Cr1.R.C.No.1574 of 2016

GPL (CO)
RGA (30/11/2021)