IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.295 of 2016

T.S.Babu ...Petitioner/Accused

Vs.

K.Singaram ...Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C. seeking to set aside the order passed in C.A.No.10 of 2014 on the file of the III Additional District and Sessions Judge, Salem dated 19.12.2014 confirming the judgement of conviction imposed in STC.No.467 of 2010 on the file of the Judicial Magistrate IV, Salem dated 09.12.2013.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.J.Hariharan
for M/s.K.V. Law Firm

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned III Additional District and Sessions Judge, Salem, dated 19.12.2014 passed in C.A.No.10 of 2014, confirming the judgement of the learned Judicial Magistrate IV, Salem, dated 09.12.2013 passed in STC.No.467 of 2010.

2. This case has arisen out of a private complaint filed by the respondent/complainant on the allegation that the revision petitioner has availed a loan of Rs.1,50,000/- from him on 10.12.2009 and executed a promissory note - Ex.P1. In order to discharge the above debt, he has issued a cheque dated 10.01.2010 drawn in Karur Vysya Bank, Salem Branch. When the cheques were presented for collection with the respondent's

Indian Overseas Bank, Seelanaickanpatty Branch on 13.05.2010, it was dishonoured on 14.05.2010 for the reason of funds insufficient. After having issued the statutory notice, the respondent/complainant has filed the private complaint.

3. After the case was taken on file, on the side of the respondent/complainant, the complainant examined himself as P.W.1 and Exs.P1 to P10 were marked. On the side of the accused, two witnesses were examined as D.W.1 and D.W.2 and Exs.D1 to D3 were marked.

4. After the conclusion of the trial and on consideration of the evidence available on record, the learned trial Judge found the accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo one year Rigorous Imprisonment and imposed a fine of Rs.5,000/- in default to undergo one month imprisonment. The appeal preferred by the accused in C.A.No.10 of 2014 was also dismissed by the learned III Additional District and Sessions Judge on 19.12.2014. Aggrieved over that, the accused has preferred this present revision case.

5. It is submitted by the learned counsel for the revision petitioner that the cheque in question was not issued for any legally enforceable debt as claimed by the complainant; his wife had issued a cheque in favour of one Murugabupathy - D.W.1; D.W.1 sent a notice to his wife through Ex.D1 by stating that the cheque was dishonoured; subsequent to that, Murugabupathy did not take any action but he was in collusive with the defacto complainant and instrumental in filing this case against the accused. The cross-examination of P.W.1 would also show that he was doing money lending business without license; he is not even maintaining accounts; the petitioner/accused had established the preponderance of probability in his favour and rebutted the initial presumption under Section 139 of N.I. Act.

6. The learned counsel for the defacto complainant submitted that the accused has not discharged his reverse burden; the relevancy of the alleged transaction between D.W.1 and the wife of the accused in this case was also not established; since the execution of the cheque was not in dispute, the respondent/complainant is entitled to the presumption under Section 139 of N.I. Act in his favour; the learned trial Judge and the First Appellate Judge have appreciated the evidence in a correct perspective and it does

not suffer from any infirmity and it does not warrant any interference.

7. Heard learned counsel for the petitioner and learned counsel for the respondent.

8. Point for consideration :-

Whether the conviction and sentence of the accused for the offence under Section 138 of Negotiable Instruments Act by the learned Judicial Magistrate IV based on the materials available on record is fair and proper?

9. The signature of the respondent/complainant on Ex.P1 – promissory note and Ex.B2 – cheque was not disputed. If the executant of the cheque admits his signature on the cheque, the initial presumption should be drawn in favour of the holder of the cheque that the cheque was issued for discharging a legally enforceable debt. But the said initial presumption is rebuttable and the reverse burden is on the accused to prove the contrary.

10. In the case in hand also, the revision petitioner did not dispute his signature in the impugned cheque (Ex.P2). His only contention is that he has not issued any cheque for any legally enforceable debt and the respondent/complainant, who is in a habit of doing money lending business, was colluding with D.W.1 – Murugabupathy and misused the cheque for the purpose of this case. In the reply notice sent by the petitioner/accused, the very same facts have been stated. The said Murugabupathy was examined as D.W.1 and he has stated in his evidence that he had sent a statutory notice under the Negotiable Instruments Act for dishonour of the cheque issued by the wife of the accused. However, he has not initiated any criminal proceedings against the wife of the revision petitioner. It is stated by the revision petitioner that the cheque issued by his wife was misplaced and hence he did not take any action. However, he denied his alleged relationship with the respondent/complainant but in his evidence, he has stated that he had been to the Court during the hearing of this case.

11. So far as the standard of proof prescribed for the reverse burden on the accused to prove the rebuttal, is not a strict liability and the proof could be of preponderance of probabilities. The accused need not to prove his defence beyond reasonable doubts for the purpose, the accused need not even

come to the bars and examine himself. It is sufficient if he could show some impropriety and improbability in the case of the complainant himself.

12. The specific defence of the revision petitioner is that D.W.1 is in collusion with the respondent and he was instrumental in filing this case by suppressing the real facts. If D.W.1 has got no connection with this transaction, there is no need for him to come to the case hearings. D.W.1 has stated in his evidence that he had been to Court during the hearings of this case. Further, it is seen from the cross-examination of P.W.1 that he is doing money lending business and he has filed several cases in connection with the dishonour of the cheques in the same Court and in different Courts.

13. Interestingly, he has stated that he is in the habit of maintaining accounts only in accordance with his choice. The above evidence of P.W.1 would show that he is doing money lending business in an authorized way. When it is exposed before the Court that the defacto complainant is a money lender and he is doing transactions without maintaining the accounts, the probability of the defence would gain weight. Under such circumstances, the burden would again shift upon the defacto complainant to prove before the Court that P.W.1 is a licensed money lender, who holds a valid license. But the respondent/complainant has not produced such document to satisfy this Court that his transaction based on the promissory note is only for a legally enforceable debt.

14. It has to be noted that any money lent by the complainant in his capacity as a money lender without appropriate license will fall him into category of legally enforceable debt. If the said fact is established by the defence, then the burden of the complainant would increase and he has to show that the money lent is a legally enforceable debt only.

15. The Courts below ought to have appreciated the evidence and given the benefit of rebutted in favour of the revision petitioner/accused. Even from the very cross-examination of P.W.1 himself, it is exhibited that he is not maintaining accounts for the money lent by him. Since the Courts below have omitted to appreciate the above preponderance available in favour of the defence, I feel that the judgement suffers from legal infirmity and hence, warrant the interference of this Court.

In the result, this Civil Revision Case is allowed and the judgement dated 19.12.2014 of the learned III Additional District and Sessions Judge, Salem, passed in C.A.No.10 of 2014 is set aside.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
   Salem.

2. The Judicial Magistrate IV,
   Salem

+1 CC to M/.s.K.V. Law Firm, Advocate sr 65022
+1 CC to Mr.C.K.M.Appaji, Advocate sr 65749.

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GPL(CO)

SP(09/02/2022)