

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.221 of 2021
and
Crl.M.P.Nos.4983,4985 and 4986 of 2021

B.Nanjan ... Petitioner

...vs...

M.Kanagaraj ... Respondent

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, to call for the records and set aside the order passed in Crl.A.No.14 of 2018 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Uthagamandalam, The Nilgiris District dated 19.01.2021 confirming the order of the trial Court in S.T.C.No.96 of 2013 on the file of the learned Judicial Magistrate, Kothagiri, The Nilgiris District dated 22.02.2018 by allowing the revision.

For Petitioner : Mr.V.Chinnasamy

O R D E R

By consent of the learned counsel for the petitioner, the matter is taken up today for final disposal at the admission stage itself, without issuing notice to the respondent.

2.This Criminal Revision Case has been filed against the order dated 19.01.2021 in C.A.No.14 of 2018 on the file of the Magalir Neethimandram (Fast Track Mahila Court) Uthagamandalam, The Nilgiris District, by confirming the order dated 22.02.2018 in S.T.C.No.96 of 2013 on the file of the learned Judicial Magistrate, Kothagiri, The Nilgiris District dated 22.02.2018.

3.The case of the petitioner/accused is that the respondent/complainant filed a complaint against the petitioner for the offence under Section 138 of Negotiable Instruments Act (herein after referred to as 'N.I.Act') before the learned Judicial Magistrate, Kothagiri, The Nilgiris District and the same was taken on file in S.T.C.No.96 of 2013. After due enquiry, the

trial Court found the accused guilty under Section 138 of N.I.Act and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay the compensation of Rs.1,50,000/-, in default, to undergo simple imprisonment for a period of three months. Aggrieved over the said order, the petitioner/accused preferred an appeal in C.A.No.14 of 2018 before the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Uthagamandalam, The Nilgiris District. After arguments, the learned Sessions Judge by an order dated 19.01.2021 dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Challenging the said judgment, the present Criminal Revision Case.

4.The learned counsel for the petitioner would submit that the petitioner borrowed a sum of Rs.70,000/- from the respondent and executed a blank cheque and promissory note in favour of the respondent for the purpose of security. Thereafter, the petitioner repaid the said amount, but, the respondent did not return the cheque and filed a complaint against the petitioner. In order to substantiate his defence, the petitioner examined one witness as D.W.1 and he has categorically deposed that on the date of execution of cheque i.e. on 17.04.2013, he went along with the petitioner to Chennai and stayed there from 10.04.2013 to 20.04.2013, therefore, it was not possible to receive the sum of Rs.1,50,000/- on 17.04.2013 and also not executed the disputed cheque. Both the Courts below are failed to appreciate the evidence of D.W.1 and convicted and sentenced the petitioner, since the petitioner has rebutted the presumption by way of examining D.W.1. Hence, the conviction and sentence passed against the petitioner are liable to be set aside.

5.It is a specific case of the respondent/complainant that on 17.03.2013, the petitioner/accused borrowed a sum of Rs.1,50,000/- and issued a cheque dated 14.04.2013 drawn on I.C.I.C.I Bank, Coonoor Branch. On 17.04.2013, the respondent presented the cheque for collection through his Bank viz., M/s.Central Bank of India, Kattabettu Branch, but, on 19.04.2013, the cheque was returned with an endorsement 'Account Closed'. Hence, the respondent sent a statutory notice to the petitioner on 27.04.2013 and the petitioner sent a reply and denied the averments made against him. Subsequently, the respondent filed a complaint in S.T.C.No.96 of 2013. After enquiry, the learned Magistrate allowed the petition and convicted and sentenced the petitioner and the same was confirmed by the learned Sessions Judge in C.A.No.14 of 2018.

6. It is seen from the records that the main defence taken by the petitioner/accused is that he borrowed a sum of Rs.70,000/- from the respondent/complainant on 11.09.2011 and he repaid the said amount on 01.04.2012, but, the respondent did not return the cheque. In order to prove the same, the petitioner examined one witness as D.W.1, who is the brother-in-law of the petitioner. D.W.1 also denied the execution of the disputed cheque. The evidence of D.W.1 and reply notice, clearly show that the petitioner admitted the execution of the cheque and the signature found in the cheque is of the petitioner, but, the only defence taken by the petitioner is that he has not borrowed a sum of Rs.1,50,000/-. Further, the petitioner admitted that he executed cheque to the complainant towards security purpose and not to discharge his liabilities. Since the petitioner admitted the execution of the cheque, he has to prove that there is no legally enforceable debt.

7. It is a settled proposition of law that 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 as that of the complainant.

8. In the present case, the petitioner/accused attempted to rebut the presumption that he has borrowed a sum of Rs.70,000/- and issued a blank cheque and repaid the said amount, but the respondent/complainant did not return the cheque. Further, the alleged date of issuance of cheque i.e. on 17.04.2013, at that time, the petitioner was not in the place of occurrence. In order to prove the same, the petitioner examined D.W.1 as one of the witness and he has also denied the execution of the said cheque. However, the petitioner has failed to produce the documents before the Court below that he has repaid the said amount and also taken steps to get back the cheque and promissory note and also not proved that on the date of execution of the cheque i.e. 17.04.2013 he was not in the station.

9. The revision is coming out of the concurrent findings of the both the trial Court and the appellate Court. Both the Courts below had already appreciated the entire evidence and also given a finding that the respondent proved his case beyond reasonable doubt and the petitioner has not rebutted the presumption in the manner known to law. This Court, while exercising the revisional jurisdiction, cannot re appreciate the

evidence and take another view. However, this Court has to see whether there is any perversity or infirmity in the order of the Courts below.

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.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

ms
To

1. The Sessions Judge, Magalir Neethimandram
(Fast Track Mahila Court) Uthagamandalam,
The Nilgiris District.

2. The Judicial Magistrate, Kothagiri,
The Nilgiris District.

+1 CC to Mr. V. Chinnasamy, Advocate sr 24736.

Cr1.R.C.No.221 of 2021
and

Cr1.M.P.No.4983,4985 and 4986 of 2021

RLD(CO)
SP(06/07/2021)

सत्यमेव जयते

WEB COPY