



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

CRL.R.C.NO.416 OF 2021

AND

CRL.M.P.NOS.6725 AND 6726 OF 2021

T.R.Paalraj

... Petitioner/Accused

vs.

M/s.Srivathsa Industries
Rep. By its Managing Partner,
V.Parakash, M/A-52, S/o.S.Venkatesan,
No.378/3, Lotus Colony 3rd Street,
Madhavaram, Chennai - 600060.

... Respondent/Complainant

Prayer:

This Criminal Revision Case filed under Section 397 (1) read with Section 401 of Criminal Procedure Code, to set aside the order dated 18.12.2020 in Crl. Appeal No.192 of 2019 passed by the XV Additional District and Sessions Court at Chennai, confirming the judgment, dated 29.03.2019 passed in C.C.No.319 of 2018 on the file of XIX Metropolitan Magistrate, Ripon Building, Chennai.

For Petitioner : Mrs.Shaikh Mehrunisa Kasim

For Respondent : Mr.C.A.Diwakar

O R D E R

The present criminal revision has been filed to set aside the order dated 18.12.2020 in Crl. Appeal No.192 of 2019 passed by the XV Additional Sessions Judge, City Civil and Sessions Court, Chennai confirming the judgment dated 29.03.2019 passed in C.C.No.319 of 2018 on the file of XIX Metropolitan Magistrate, Ripon Building, Chennai.



2. The petitioner is the accused and the respondent is the complainant. The respondent/complainant filed a private complaint in C.C.No.319 of 2018 under Section 210 of the Criminal Procedure Code, 1973 (hereinafter referred to as Cr.P.C. for short) for the offence under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner before the learned XIX Metropolitan Magistrate, Ripon Building, Chennai. The learned Metropolitan Magistrate, after enquiry, by an order dated 29.03.2019, convicted and sentenced him to undergo three months simple imprisonment and also pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment and also pay the compensation of Rs.5,50,000/-. Challenging the said judgment of conviction and sentence, the petitioner has filed an appeal before the learned Principal Sessions Judge, Chennai in CrI.A.No.192 of 2019. The learned Principal Sessions Judge made over the appeal to the file of learned XV Additional Sessions Judge, City Civil and Sessions Court, Chennai, for disposal. The learned XV Additional Sessions Judge, after hearing the appeal, by an order dated 18.12.2020, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the learned XIX Metropolitan Magistrate in C.C.No.319 of 2018 dated 29.03.2019. Challenging the said order of dismissal of the appeal, the petitioner has filed the present revision before this Court.

3. Learned counsel for the petitioner would submit that the Trial Court failed to appreciate the defence taken by the petitioner and without looking into the matter, simply accepted the case of the respondent/complainant and convicted the petitioner. Therefore, there is perversity.

4. Though the Appellate Court is the final Court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding, instead of re-appreciating the evidence independently, endorsed the view of the learned Metropolitan Magistrate, which is perverse. Therefore, the petitioner has filed the present revision and the revision has to be allowed.

5. Learned counsel for the respondent would submit that the petitioner admitted the signature in the disputed cheque and also admitted the execution of cheque. Therefore, there is a presumption under Section 139 of N.I. Act that the complainant has proved his case and it is for the accused to rebut the presumption in accordance with law. Since the petitioner/accused has not rebutted the presumption and therefore, the learned Metropolitan Magistrate has rightly allowed the complaint and convicted and imposed sentence on him. Challenging the same, he approached the Appellate Court and the Appellate Court also



rightly appreciated the evidence and quoted that the execution of cheque and the signature in the cheque were also admitted by the petitioner and found that the petitioner has not rebutted the presumption and there is no perversity. Therefore, there is no merit in the present revision and the same is liable to be dismissed.

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

7. Admittedly, the petitioner is the accused and the respondent is the complainant. The respondent/complainant filed a private complaint before the learned XIX Metropolitan Magistrate in C.C.No.319 of 2018. The learned Metropolitan Magistrate, after enquiry, allowed the petition and found guilt of the petitioner, convicted and imposed a sentence and also awarded compensation equal to the cheque amount. Challenging the same, he filed the appeal before the learned XV Additional Sessions Judge, and the learned XV Additional Sessions Judge has also re-appreciated the evidence and gave a independent finding that the petitioner has committed the offence under Section 138 of N.I. Act and dismissed the said appeal and confirmed the order of the learned Metropolitan Magistrate. Now, the petitioner/accused is before this Court.

8. A reading of the materials and judgments of both the Courts below and the issuance of the cheque and the signature in the cheque are not in dispute and in Ex.P5, he made an admission regarding issuance of cheque and therefore, once he has admitted the execution of cheque, there is a statutory presumption under Section 139 of NI Act that it is for the accused to rebut the presumption. No doubt, the burden of proof of the accused is not as heavy as the complainant. However, the accused has to rebut the presumption by preponderance of probability in the manner known to law. In this case, this Court finds that the petitioner/accused has not rebutted the presumption in the manner known to law.

9. It is well settled proposition of law that the revision court cannot step into the shoes of the Appellate Court and re-visit and re-appreciate the entire materials independently.

10. The Revision Court has to see as to whether there are any perversity in appreciation of evidence by the Courts below.

11. A reading of the entire materials, the petitioner/accused himself admitted that the execution of cheque and also acknowledged the same by way of letter/Ex.P5. Therefore, this Court does not find any perversity in appreciation of evidence by both the Courts below and there is



no perversity in the judgment of both the Courts below and this Court does not find any merit in the revision and the revision is liable to be dismissed.

12. Accordingly, the criminal revision is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The XV Additional District and Sessions Court at Chennai.
2. The XIX Metropolitan Magistrate, Ripon Building, Chennai.
3. The Section Officer, Criminal Section, High Court, Madras.

+lcc to Mr.C.A.Diwakar, Advocate, S.R.No.41308
+lcc to M/s.Shaikh Mehrunisa, Advocate, S.R.No.41218

Cr1.R.C.No.416 of 2021

PL(CO)
PM/15/03/2022