

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2021

Coram :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.895 of 2020 and
CrI.M.P.No.6288 & 6289 of 2020

A.R.Aneesh ... Petitioner/Appellant

Versus

Vijayakumar ...Respondent/Complainant

Criminal revision Petition is filed under Sections 397 r/w 401 of the Cr.P.C., to call for the records relating to the order passed by the learned XVIII Additional District and Sessions Judge, Chennai in Criminal Appeal No.363 of 2019 and dated 09.03.2020 in confirming the order of conviction passed by the Learned Metropolitan Magistrate, Fast Track Court II Egmore at Allikulam, Chennai in C.C.No.4639/2017 on 01.10.2019 and set aside the same as erroneous, unsustainable in law and on facts.

For Petitioner : Mr.AR.M.Arunachalam

For Respondent : Mrs.C.Vishnupriya
(No appearance)

O R D E R

This Revision has been filed against the the order of the learned XVIII Additional District and Sessions Judge, Chennai in Criminal Appeal No.363 of 2019, dated 09.03.2020 confirming the order of conviction passed by the learned Metropolitan Magistrate, Fast Track Court-II, Egmore at Allikulam, Chennai in C.C.No.4639 of 2017.

2. The petitioner is the accused in C.C.No.4639 of 2017 and the respondent is the complainant. The respondent filed a private complaint before the learned Metropolitan Magistrate, Fast Track Court No.:II, Egmore, against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, which was taken on file in C.C.No.4639 of 2017 and after enquiry, the learned Magistrate found the petitioner guilty for the offence u/s. 138 of the Negotiable Instruments Act and vide order dated 01.10.2019 convicted and sentenced the

accused to undergo one year simple imprisonment and the accused was directed to pay a compensation of Rs.10,00,000/- to the complainant under Section 357 (3) Cr.P.C and in default of payment of the compensation, the accused shall undergo a further period of three months simple imprisonment as default sentence. Challenging the said order of conviction and sentence, the petitioner herein filed Criminal Appeal before the learned Sessions Judge in C.A.No.369 of 2019 and the learned Sessions Judge, after hearing the arguments and appreciating dismissed the Appeal and confirmed the conviction and sentence passed by the learned Magistrate. Challenging the same, the petitioner has filed the revision before this Court.

3. It is the case of the respondent/complainant that the petitioner/accused borrowed a sum of Rs.10,00,000/- in between January 2015 to 2016 on several occasions and issued a cheque only on 20.03.2017 bearing No.001905 drawn on ICICI Bank, Betlagundu Branch for repayment of the loan. Thereafter, since the petitioner has not repaid the amount, the complainant presented the cheque for collection in The South Indian Bank, Koyambedu Branch on 23.03.2017 and the said cheque was returned for the reason "Funds insufficient" and he received intimation from the bank on 24.03.2017. When the same was informed by the complainant to the accused, he advised to deposit the same after one week and the respondent presented the cheque for collection on 30.03.2017 and the same was again returned on 31.03.2017 and again at the request of the petitioner he presented the cheque on 07.04.2017 and the same was returned on 10.4.2017. Therefore, since even at request of the petitioner, the respondent presented the cheque for three times and all the three times the cheque was returned with the endorsement "Funds Insufficient". Therefore, he issued statutory notice on 25.04.2017 to the petitioner to pay the cheque amount with interest and the same was returned as 'poor intimation' and therefore he again sent notice on 06.05.2017 and the same was returned as 'unclaimed' and therefore, the respondent filed the private complaint before the learned Metropolitan Magistrate, Egmore.

4. The case of the petitioner/accused is that he did not know the respondent earlier and he had no transaction with him. He never borrowed money from the respondent and he borrowed from one N.K.Krishnan and issued a cheque as security and subsequently the said amount was repaid, but the said N.K.Krishnan did not return the cheque and through the respondent, who is his close relative, he filed the private complaint.

5. The learned trial judge, on enquiry and upon considering the evidence placed before this Court, found that the petitioner had committed the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him and also directed him to pay the compensation.

6. The learned counsel for the petitioner would submit that though the respondent/complainant has stated in his complaint in paragraph 2 that from January 2015 to March 2016, he had given loan to the complainant on several occasions, in the cross examination, the complainant has stated that when he was residing in Batlakundu, he lent money and he came to Chennai in the year 2013 itself and therefore if the loan was advanced to the petitioner it was during 2013 or prior to 2013 and not between 2015 and 2016 as alleged in the complaint. He would further submit that during cross examination the complainant had admitted that only out of income derived from the sale proceeds of the Sawmill, he had advanced the loan to the accused and in fact the sale proceeds was acquired by five persons together as per the encumbrance certificate and the complainant's share is only about to 4 lakhs and there is no chance of the complainant having the entire sale consideration and the complainant had not given the specific date on which he lent the money. He would further submit that the respondent has also not clearly stated the source of money for lending loan to the petitioner. It is the further submission of the learned counsel for the petitioner that the petitioner has established his defense by way of preponderance of probability, but the learned Magistrate as well as Additional Sessions Judge failed to consider the defense taken by the petitioner and wrongly came to the conclusion that the petitioner borrowed, but not repaid the same and issued cheque and when the cheque was presented for collection, it was returned on the ground funds insufficient and thereby convicted and sentenced the accused as stated supra, which warrants interference.

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

8. From the perusal of the materials and also Judgments of Courts below, the signature of the petitioner in the cheque has not been disputed and the only dispute is that the petitioner has not borrowed money from the respondent and not issued the cheque, whereas he admitted that he borrowed money from one N.K.Krishnan who is a close relative of the respondent/complainant and he also stated that he repaid the money to him, but the said N.K.Krishnan failed to return the cheque, for which the petitioner has not taken any steps in the manner known to law either by issuing notice to said N.K.Krishnan to get back the cheque or by filing any complaint

after sending notice to him. Therefore, the defense taken by the petitioner is not sustainable. Further, the petitioner has not established that the disputed cheque was issued only to Mr.N.K.Krishnan. On the other hand, there are contradictions and inconsistencies in the version of the petitioner about the quantum of loan obtained from N.K.Krishnan. The non-taking action against the said N.K.Krishnan is fatal to the case of the defence.

9. As far as the source for loan amount is concerned, the respondent has clearly deposed that he was running the saw mill and alienated the same and settled at Madras and he lent the loan to the petitioner not on one date in single payment, but between January 2015 and March 2016 on several occasions and further the petitioner himself admitted in the written argument that the respondent sold the saw mill at Rs.20 lakhs and got a share of Rs.4,00,000/-. Further, it is stated by the respondent that he had been earning a sum of Rs.60,000/- per annum when he was running saw mill and lent loan to the petitioner out of the income received from the saw mill, which fact was not denied by the petitioner. The petitioner has not proved that the respondent has no capacity or means to lend the money and therefore, the contention of the learned counsel for the petitioner on the ground of means to lend the loan is not acceptable and the same is rejected.

10. Further as far as date of issuance of cheque is concerned, the respondent has clearly stated in his complaint in paragraph 2 that from January 2015 and March 2016, on several occasions he had given the money to the petitioner and in the year 2017, the petitioner issued a cheque to the respondent and when the same was presented for collection, it was returned as "Insufficient funds" for three times on various dates i.e., 23.03.2017, 31.03.2017 and 10.04.2017. Though the learned counsel for the petitioner would submit that during the cross examination, the respondent himself admitted that he gave the money when he was in Betlagundu and he also admitted that he came to Chennai in the year 2013, whereas in the complaint he has stated that between January 2015 and March 2016, he gave the money to the petitioner and therefore when he came to Chennai in 2013 itself, he could not have given the money in the year 2015-2016.

11. On a careful perusal of the deposition it is seen that the respondent has not stated the exact date on which he gave money, when he left Batlakundu and when he landed in Chennai. Be that as it may, he might have come to Chennai in the year 2014. Once the petitioner had not denied the signature and also not established that cheque was given to one N.K.Krishnan and not to the respondent and on what date he borrowed money from

N.K.Krishnan and repaid the money and on what date again he asked the cheque, the learned Magistrate and the District Judge has rightly convicted the petitioner by appreciating the evidence and materials placed before them.

12. Further, this Court while exercising the revisional jurisdiction, has to see whether there is any perversity in the order passed by the appellate court. A reading of the entire materials on record shows that the signature was not in dispute and the defense taken by the petitioner relating to issuance of cheque to N.K.Krishnan is not established and lending capacity of the respondent also not disproved. Therefore when the signature is not in dispute, the presumption under Section 139 of the Negotiable Instruments Act has come into picture. No doubt presumption need not be rebutted by direct evidence and it can be rebutted by preponderance of probability, the presumption under Section 139 of Negotiable Instruments Act is a rebuttable presumption. But, the petitioner has not rebutted the presumption in the manner known to law. Therefore, this Court does not find any perversity, infirmity of illegality in the orders passed by the Courts below and the revision is liable to be dismissed.

13. Accordingly, this Criminal Revision case is dismissed, confirming the Judgment of the Courts below. Consequently, connected M.P.'s are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate, Fast Track Court-II, Egmore at Allikulam, Chennai.
2. The XVIII Additional District and Sessions Judge, Chennai.
3. The Public Prosecutor, Madras High Court.

4. The Deputy Registrar (Crl.side)
Madras High Court.

+1cc to Mr.A.R.M.Arunachalam, Advocate Sr.4311

Crl.R.C.No.895 of 2013
and
C.M.P.No.6288 & 6289 of 2020

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