Bail Slip

The Appellant/Accused,namely Rajapoomani,W/o.Lourdhusami was released on bail as per order of this Court dated 17.10.2014 in MP.NO.1/14 IN Crl.R.C.No.1066 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HONOURABLE Mr.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1066 of 2014

Rajapoomani,
W/o.Lourdhusami ... Petitioner/Accused

Vs.

Balakalaivani,
W/o.Ragu ... Respondent/Complainant

PRAYER: Criminal Revision Case filed, under Section 397 (1) and 401 Cr.P.C., to call for the records and set aside the Judgement in C.A.No.12 of 2014, dated 06.09.2014, on the file of the learned Principal Sessions Judge, Puducherry, confirming the Judgement of the Trial Court in C.C.No.30 of 2011, on the file of the learned Judicial Magistrate No.I, Puducherry, dated 14.03.2014.

For Petitioner : Mr.A.Gokulakrishnan
For Respondent : Mr.Stalin Abhimanyu

O R D E R

This Criminal Revision Case has been preferred by the Revision Petitioner seeking to call for the records and set aside the Judgment in C.A.No.12 of 2014, dated 06.09.2014, on the file of the learned Principal Sessions Judge, Puducherry, confirming the Judgement of the Trial Court in C.C.No.30 of 2011, on the file of the learned Judicial Magistrate No.I, Puducherry, dated 14.03.2014.

2. For the sake of convenience, the Petitioner and the Respondent will be referred to as Accused and Complainant, respectively.

3.It is the case of the complainant that on 22.02.2010, the accused approached her and borrowed a sum of Rs.66,000/- to meet out family expenses. To witness the said borrowal, the accused had issued a post dated cheque/Ex.P1, bearing

No.918744, dated 27.05.2010, drawn on the Indian Overseas Bank, Reddiarpalayam, Pondicherry. After due intimation to the accused, she had presented the cheque for collection on 27.05.2010, through Indian Bank, Mudaliarpet Branch and the cheque had been returned by the banker through a memo/Ex.P2, dated 20.05.2010, with an endorsement "insufficient funds". The Complainant had informed about the dishonour of cheque to the accused even then she had not come forward to return the cheque amount. Therefore, the complainant had issued a notice/Ex.P3, dated 15.06.2010 and the same was received and acknowledged by the accused on 21.06.2010, vide postal acknowledgment card/Ex.P4. The accused had issued a reply notice/Ex.P5, dated 07.07.2010, with false allegations to the complainant. Hence, the complaint. Thereafter, the prosecution initiated proceedings in C.C.No.30 of 2011, before the learned Judicial Magistrate No.I, Puducherry, for the offence under Section 138 read with 142 of the Negotiable Instruments Act.

4.On appearance of the accused before the Trial Court, the accused was questioned under Section 207 Cr.P.C., and she was denied the accusation. The complainant examined herself as P.W.1 and marked documents as Ex.P1 to Ex.P5. During the cross examination, P.W.1 had sought for the copy of the complaint in C.C.No.389 of 2010 marked it as Ex.D1 and the judgment dated 10.12.2012 in C.C.No.389 of 2010 passed by the learned Judicial Magistrate No.I, Puducherry was marked as Ex.D2.

5.When the accused was questioned under Section 313 (1) (b) Cr.P.C., on the incriminating circumstances appearing against her and she denied the same.

6.After considering the materials and hearing the arguments on either side, the Trial Court found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, and passed the Judgment dated 14.03.2014 in C.C.No.30 of 2011 and convicted the accused and sentenced her to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to pay the fine amount, to undergo simple imprisonment for two months.

7.Challenging the Judgment of conviction and sentence passed by the learned Judicial Magistrate No.I, Puducherry in C.C.No.30 of 2011, dated 14.03.2014, the accused had filed C.A.No.12 of 2014, before the learned Principal Sessions Judge, Puducherry and the Appellate Court, by the Judgment and Order dated 06.09.2014, had dismissed the Criminal Appeal in C.A.No.12 of 2014 and confirming the Judgment of conviction and sentence, passed by the Trial Court in C.C.No.30 of 2011. Challenging which, the accused has filed the present Criminal Revision Case under Section 397 (1) r/w 407 Cr.P.C.

8.Heard Mr.Gokulakrishnan, learned counsel appearing for the Petitioner/Accused and Mr.Stalin Abhimanyu, learned counsel appearing for the Respondent/Complainant.

9.The learned counsel for the petitioner/accused would submit that the accused and the complainant are known to each other from the year 1998, which was admitted by the complainant in her cross examination. The accused herein approached the complainant and sought for business loan through a private financial institution for doing business. As per the request of the complainant, the accused had given three blank post dated cheques towards security for the purpose of obtaining loan. Whereas, the complainant neither arranged for a loan nor returned the cheque given for the security purpose. Even after the request was made by the accused to return the cheques, the complainant had not returned the same. However, the complainant had issued a statutory notice viz. Ex.P3. After receipt of the legal notice, the accused had sent a detailed reply dated 07.07.2010, stating how and in what manner the cheques went into the hands of the complainant and a categorical denial was made that no consideration was passed in respect of the cheques. Thus, the accused had raised a probable defence relating to the non passing of consideration. Further, in the very same reply, the accused had also referred to two other cheques which were handed over to the complainant. Though the accused had marked the complaint in C.C.No.389 of 2010 as Ex.D1 and the Judgments in C.C.No.389 of 2010 as Ex.D2, by way of cross examination, the Courts below have failed to take into consideration the same.

10.The reply notice was sent even prior to the filing of the complaint and though the reply notice was referred to in the complaint, the complainant had not stated anything with regard to the nature or mode on what basis the consideration was passed to the accused. Further, during the course of evidence and during the cross examination, the accused had by marking Ex.D1 proved that the cheques were misused by the complainant and her brother and even in the cross examination, the complainant was unable to explain the mode of payment of money or the dates on which the payments were made. When the accused had rebutted the presumption under Section 139 of the Negotiable Instruments Act, the burden of proof shifts to the complainant and the complainant has to prove the guilt of the accused beyond all reasonable doubts. Though the standard of proof so as to prove a defence on the part of the accused is by preponderance of probabilities, he would submit that preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which the accused relies. The accused had not only denied having received any amounts, she had by categoric evidence proved that the cheques were issued only towards security. The accused had by marking Ex.D1 further proved the abnormal conduct of the complainant and her brother. Whereas, the Courts below, failed to properly analyze and appreciate the evidence on record and have wrongly convicted the accused and thereby, he would seek to set aside the order passed by the Courts below.

11.In support of his contention, the learned counsel for the petitioner would rely upon the Judgment of the Hon'ble Apex Court in Basalingappa vs. Mudibasappa reported in (2019) 5 SCC 418.

12.Per Contra, Mr.Stalin Abhimanyu, learned counsel appearing for the respondent/complainant would submit that the complainant had proved her case beyond all reasonable doubts and that as per Section 139 of the Negotiable Instruments Act, it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part of any debt or other liability. The accused had issued post dated cheques towards a borrowal of amount on 20.02.2010, the cheque was presented for collection on 27.05.2010 and returned as “Insufficient Funds” on 29.05.2010 and notice was issued on 14.06.2010 and the same was acknowledged by the accused on 21.06.2010 and thereby, the complainant had proved her case beyond reasonable doubts.

13.The learned counsel appearing for the respondent/complainant would further submit that the accused has admitted the issuance of the cheque and her signature found in the cheque and thereby, the presumption is in favour of the complainant and there exists a legally enforceable debt or liability which is for the accused to rebut such presumption by leading evidence. In support of his case would rely upon the judgment of the Hon'ble Apex Court in APS Forex Services Private Limited vs. Shakti Intenational Fashion Linkers and Others reported in (2020) SCC Online SC 193.

14.Per Contra, the learned counsel for the petitioner/accused would submit that in this case, though the accused had admitted the issuance of the cheque she has by replying to the notice and by letting in cogent evidence rebutted the presumption under Section 138 of the N.I.Act., thus by preponderance of probabilities had disproved the case of the complainant. Further, the complainant has not let in evidence to prove the passing of consideration and the case of the accused squarely falls within the parameters of Basalingappa's case. In APS Forex case, the Courts have found the accused guilty since the presumption is not rebutted and the accused had not denied the issuance of the cheque and the signature in the cheque.

15.This Court is aware of the legal position that the Revisional Court cannot re-appreciate the evidence like an Appellate Court but when it is shown that there has been a gross mis-appreciation of evidence by the Courts below, the power of this Court go into the evidence has been protected by Section 401 (1) Cr.P.C.

16.Now, while analyzing the evidence, the complainant has let in evidence in chief by filing proof affidavits and she had marked Ex.P1 to Ex.P5. However, nothing had been disclosed in the notice, complaint or in the proof affidavit filed as evidence in chief as to how and in what manner, the consideration was paid to the accused. Further, it is admitted by the complainant that the signature in the cheques and the other contents in the cheques were filled by two different inks and she had also admitted that the signatures in the cheques were not made in front of her. Further, though the complainant had stated that she had paid the money to the accused after pledging the jewels in a pawn shop, no receipts have been produced to prove the pledging of jewels. Further, she had stated that she does not remember the date on which the amounts were handed over to the complainant. Though, the complainant had stated that she is not aware of the other cases filed against the accused, when confronted with the judgments of acquittal in C.C.No.389 of 2010, she had admitted having filed two cases against the accused earlier. Thus, the accused had proved the manner and circumstances under which the cheques got into the hands of the complainant and had also proved by way of evidence by marking Ex.D1 and Ex.D2 to prove that earlier the complainant and her brother by misusing the cheques given for the security purpose, had filed cases against her, which had ended in acquittal in favour of the accused. Thus, by adducing oral and documentary evidence, the accused had probabilised her defence by preponderance of probability and attended circumstances.

17.The Hon'ble Apex Court in Basalingappa vs. Mudibasappa reported in (2019) 5 SCC 418, has held:

> "25.We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarize the principles enumerated by this Court in following manner:
>
> 25.1)Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
>
> 25.2)The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
>
> 25.3)To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. In reference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the

circumstances upon which they rely.

25.4) That is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5) It is not necessary for the accused to come in the witness box to support his defence."

18. Applying the preposition of law as noted above and applying it to the facts of the present case, this Court is of the opinion, that the facts of the present case squarely falls within the principle laid down in Basalingappa's case as referred above. In the present case, the accused had questioned the financial capacity of the complainant and had denied having borrowed the money and also denied passing of consideration. Further, by letting in oral and documentary evidence the accused has proved that the cheques were given for the security purpose. Despite the questioning the financial capacity and passing of consideration, the complainant had not let in any evidence. Admittedly, the burden had shifted on the complaint once the accused has rebutted the presumption by raising a probable defence. However, the complainant had not proved the passing of consideration. Both the Courts below, without properly analysing and appreciating the evidence have rendered a perverse finding by finding the accused guilty for the offence under Section 138 of the Negotiable Instruments Act. The facts in this case are not similar to the facts in APS Forex case mentioned supra.

19. For the reasons stated above, the Criminal Revision Case stands allowed. The Judgment and Order in C.A.No.12 of 2014, dated 06.09.2014, on the file of the learned Principal Sessions Judge, Puducherry, confirming the Judgement and Order in C.C.No.30 of 2011, on the file of the learned Judicial Magistrate No.I, Puducherry, dated 14.03.2014 are set aside.

20. In fine, this Criminal Revision Case stands allowed. The accused is acquitted from all the charges framed against her under Section 138 of the Negotiable Instruments Act. The bail bond if any executed by the accused shall stand cancelled. The fine amount, if any, paid by the accused shall be refunded to her. The Registry is directed to return the original records to the respective Courts below.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssi
To

1. The Principal Sessions Judge, Puducherry.

2.The Judicial Magistrate No.I, Puducherry.

3.The Chief Judicial Magistrate,Puducherry(For information)
Copy to:
The Section Officer,
Criminal Section,
High Court,Madras

+1cc to Mr.A.Gokulakrishnan, Advocate SR.No. 8187

Crl.R.C.No.1066 of 2014

A.SK(17.03.2021)