



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.552 of 2021
and
Crl.M.P.Nos.9074 and 9075 of 2021

D.Sudhakar ... Petitioner/Sole Accused

..VS..

Maheswari ... Respondent/complainant

Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C, to call for the records pertaining to the judgment passed in Crl.A.No.47 of 2019 on the file of the III Additional District and Sessions Court, Villupuram at Kallakurichi dated 02.03.2021 confirming the judgment passed in C.C.No.36 of 2017 passed by the Judicial Magistrate Court (Fast Track Level), Kallakurichi dated 04.06.2019 and set aside the same and acquit the revision petitioner/accused.

For Petitioner : Mr.A.Manojkumar

O R D E R

This Criminal Revision Case has been filed against the order dated 02.03.2021 passed in C.A.No.47 of 2019 by the learned III Additional District and Sessions Judge, Villupuram at Kallakurichi, by confirming the order dated 04.06.2019 passed in C.C.No.36 of 2017 by the learned Judicial Magistrate Court (Fast Track Level), Kallakurichi.

2.It is the case of the respondent/complainant that the petitioner/accused had borrowed a sum of Rs.10,00,000/- from the respondent's husband to meet out his business expenses and agreed to repay the same in three months. Subsequently, the complainant's husband died on 11.12.2015. After repeated



WEB CONTENT

demands, the petitioner issued two cheques in favour of the complainant. On 26.07.2016, when the complainant presented the cheques for collection through her Bank viz., Central Bank, Kallakurichi, the same were returned with an endorsement 'funds insufficient on the account of the accused'. Hence, the respondent sent a statutory notice to the petitioner, on receipt of the notice, the petitioner neither come forward to make the payment in full nor in part. Hence, 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 (Fast Track Level) Kallakurichi and the same was taken on file in C.C.No.36 of 2017.

3.The trial Court, after due enquiry found that the accused guilty under Sections 138 r/w 142 of N.I.Act and convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay the compensation of Rs.10,00,000/-, in default, to undergo simple imprisonment for a period of three months. Aggrieved over the said judgment the petitioner/accused preferred an appeal in C.A.No.47 of 2019 before the learned III Additional Sessions Judge, Villupuram @ Kallakurichi, which was dismissed on 02.3.2021. Challenging the said judgment, the present Criminal Revision Case.

4.The learned counsel for the petitioner would submit that the respondent herein is the wife of the creditor and they have no means to lend a huge sum of Rs.10,00,000/-. Both the Courts below failed to consider the financial capacity of the husband of the respondent erroneously found that cheques were issued for discharge of legally enforceable debt and wrongly convicted and sentenced the petitioner, which warrants inference of this Court.

5.It is seen from the records that the petitioner has not denied the execution of the cheque and signature found in the cheque. Since the petitioner admitted the execution of the cheque, he has to prove that there is no legally enforceable debt.

6.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 with same rigor as prosecution is required to prove its case.

7. In the present case, the respondent/complainant was examined as P.W.1 and she has categorically stated that the petitioner borrowed the said amount from her husband and issued two cheques and the same were returned with an endorsement 'funds insufficient on the account of the accused' and she also sent legal notice to the petitioner. Though the learned counsel for the petitioner questioning the financial capacity of the respondent's husband, however, he has not sent any reply notice to deny the same or put a single question during cross examination regarding the financial capacity of the respondent's husband.

8. The revision is coming out of the concurrent findings of the both the trial Court and the lower 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 on the fact findings. However, this Court has to see whether there is any perversity in appreciation of evidence by the Courts below.

9. Under these circumstances, 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.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

ms



To

1.The III Additional District and Sessions Court,
Villupuram at Kallakurichi.

WEB COPY

2.The Judicial Magistrate Court (Fast Track Level),
Kallakurichi.

CrI.R.C.No.552 of 2021
and

CrI.M.P.No.9074 and 9075 of 2021

SJ(CO)
B.VC (26/10/2021)