



BAIL SLIP

The Petitioner in CrI.R.C.678/2019 viz.,
M.R.Naveenrajapathy, S/o, Radhakrishnan, aged 46 years was
directed to be released on bail as per the order of this Court
dated 15.07.2019 made in CrI.M.P.No.9445 of 2019 in
CrI.R.C.No.678 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2021
PRONOUNCED ON : 26 .08.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.NOS.732 AND 733 OF 2019
AND
CRL.R.C.NO.678 OF 2019

S.Sundaram	...Appellant in CrI.A.No.732/2019 /Complainant
D.Palaniappan	...Appellant in CrI.A.No.733/2019 /Complainant
M.R.Naveenrajapathy	...Revision Petitioner / Accused
Vs	
M.R.Naveenrajapathy	...Respondent / Accused in CrI.A.Nos.732 and 733 of 2019.
Samudi	...Respondent / Complainant in CrI.R.C.678/2019

PRAYER : Criminal Appeal Nos.732 and 733 of 2019 filed under
Section 378 of Cr.P.C., against the judgment dated 10.04.2019 in
CrI.A.No.71 and 70 of 2018 respectively on the file of the
learned III Additional Sessions Judge, Vellore @ Tirupattur,
reversing the judgment dated 23.03.2018 in STC.No.1 of 2016 and
STC.No.15 of 2016 on the file of the learned Judicial Magistrate
No.3, Tirupattur.



Prayer in CrI.R.C.No.678 of 2019 : Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C., to call for the records and set aside the judgment of the appellate court made in C.A.No.69 of 2018 on the file of the learned III Additional Sessions Judge, Vellore, Vellore District dated 10.04.2019, in dismissing the Appeal filed by the Appellant herein and in confirming the conviction passed by the trial court in S.T.C.No.05 of 2016 for the offence under Section 138 of the Negotiable Instruments Act by judgment dated 23.03.2018 on the file of the learned Judicial Magistrate No.III, Tirupattur, Vellore District.

For Appellants in

CrI.A.Nos.732 and 733 of 2019 : Mr.R.Selvakumar

For Respondent in

CrI.A.Nos.732 and 733 of 2019 : Mr.Myilsamy
for Mr.S.Panneerselvam

For Petitioner

CrI.RC.678/2019 : No appearance

For Respondent

CrI.RC.678/2019 : Mr.R.Selvakumar.

COMMON JUDGMENT

Criminal Appeal Nos.732 and 733 of 2019 are filed by the Complainant against the judgment dated 10.04.2019 in CrI.A.No.71 and 70 of 2018 respectively on the file of the learned III Additional Sessions Judge, Vellore @ Tirupattur, whereby reversing the judgment dated 23.03.2018 in STC.No.1 of 2016 and STC.No.15 of 2016 on the file of the learned Judicial Magistrate No.3, Tirupattur.

CrI.R.C.No.678 of 2019 is filed by the accused praying to set aside the judgment of the appellate court made in C.A.No.69 of 2018 on the file of the learned III Additional Sessions Judge, Vellore, Vellore District dated 10.04.2019, whereby confirming the conviction passed by the trial court in S.T.C.No.05 of 2016 for the offence under Section 138 of the Negotiable Instruments Act by judgment dated 23.03.2018 on the file of the learned Judicial Magistrate No.III, Tirupattur, Vellore District.



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2. Firstly, Criminal Revision case is taken up for discussion. In the Criminal Revision case, Revision petitioner is the accused. Respondent is the complainant. The respondent filed a private complaint under Section 200 Cr.P.C., against the petitioner herein for the offence under Section 138 of Negotiable Instruments Act. Before the Judicial Magistrate No.III, Thirupathur, Vellore District, the learned Magistrate, after taking cognizance of the complaint in STC.No.5 of 2016, after completing the formalities, conducted enquiry.

3. During the enquiry, on the side of the respondent, two witnesses were examined as P.W.1 and 2. 5 documents were marked as Ex.P.1 to P.5. On the side of the Revision Petitioner herein/accused, no witness was examined. However 3 documents were marked. After enquiry, trial court found the guilt of the petitioner herein/accused and convicted him for the offence under Section 138 of N.I.Act and sentenced him to undergo 6 months imprisonment and pay a sum of Rs.5 lakhs as compensation, in default to pay the compensation, to undergo 3 months simple imprisonment.

4. Challenging the said judgment of conviction and sentence, the petitioner herein filed appeal before the Principal District and Sessions Judge, Vellore in CrI.A.No.69 of 2018. The learned Principal District and Sessions Judge, after taking appeal on file, made over the appeal to the 3rd Additional Sessions Judge for disposal. The learned III Additional Sessions Judge, Vellore, after hearing the arguments, advanced on either side, considering the material facts and also judgment of the Magistrate, dismissed the appeal and confirmed the judgment of the Magistrate. Therefore, now again, challenging the dismissal of the appeal passed by the III Additional Sessions Judge, Vellore, the present Revision is filed before this court.

5. The learned counsel for the Revision Petitioner would submit that the petitioner herein said to have borrowed a sum of Rs.5 lakhs from the respondent herein on 10.10.2015, to meet out his urgent family expenses for which the petitioner said to have issued cheque for the said sum of Rs.5 lakhs bearing Cheque No.000060 dated 10.11.2015 drawn on Bank of Baroda, Vellore, in favour of the respondent herein. Actually, the petitioner issued the cheque to the respondent only as security at the time of getting loan and not for any other purpose and the same has been



and borrowal. So once the execution is admitted and the initial burden is proved by the respondent, when the petitioner has taken defence that the cheque given is not for discharge of legally enforceable debt, it is for him to prove the repayment of loan. It is for the petitioner/accused to rebut the assumption. The petitioner/accused has not rebutted the presumption. Therefore, both the courts have rightly appreciated the evidence and convicted the petitioner and there is no merit in the revision.

10. Heard both sides and perused the records.

11. The case of the respondent herein/complainant is that the petitioner herein said to have borrowed a sum of Rs.5,00,000/- from the respondent/complainant herein on 10.10.2015 to meet out his urgent family expenses for which the petitioner said to have issued a cheque for the said sum of Rs.5,00,000/- bearing Cheque No.000060 dated 10.11.2015 drawn on Bank of Baroda Vellore Branch, Vellore, in favour of the respondent/complainant herein. The said cheque was presented by the Respondent in his bank on 11.11.2015 but the same was returned as "Funds Insufficient". The respondent had issued a legal notice to the petitioner/accused u/s.138 of N.I.Act calling upon to pay the said cheque amount within 15 days from the date of receipt of the said legal notice. Though the petitioner had acknowledged the receipt of the said legal notice on 30.01.2015, sent a Reply Notice on 01.12.2015 and failed to make payment of the said cheque amount and therefore, the respondent filed the private complaint.

12. Therefore, in order to prove the case of the respondent before the Magistrate during the trial, on his side, two witnesses were examined. The respondent himself was examined as P.W.1 and the Bank Manager was examined as P.W.2. Cheque, written memo, statutory notice, acknowledgement and reply notice were marked as Ex.P.1 to Ex.P.5.

13. A reading of the entire evidence would go to show that the petitioner has not denied the signature found in the disputed cheque - Ex.P.1 and he has also not denied the execution of the cheque. But however, the learned counsel for the petitioner would submit that the cheque was issued only for security purpose. The petitioner taken the main defence before



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the Magistrate that at the time of cross examination, he put a suggestion that petitioner borrowed a sum of Rs.5 lakhs and issued a cheque 000049 and the amount was repaid and the respondent has not returned the cheque. Therefore, the main defence is plea of discharge. It is stated that the petitioner issued the blank cheque to the respondent for the purpose of security only and the same has been misused by the respondent without the knowledge of the revision petitioner. However, plea of discharge not been proved. But it is settled proposition of law that once execution is admitted as per Section 139 of N.I.Act, there is presumption that the cheque was executed for discharge of legally enforceable debt and the said presumption is statutory presumption. No doubt it is rebuttable presumption and it is for the accused to rebut the presumption.

14. Therefore, in this case, the records show that the petitioner has not rebutted the presumption in the manner known to law, that is, no document was produced to show that he repaid the money and the defence taken is that the respondent despite receiving the money, has not returned the cheque and subsequently, misused the cheque, however, it is for the petitioner to prove his plea of discharge. Then only, presumption said to have been rebutted. In the present case on hand, the petitioner has not produced any document to show that he discharged his liability for repayment of money. Therefore, this court finds that the petitioner has not rebutted the presumption in the manner known to law.

15. The scope of Revision is very limited. This court cannot sit in the arm chair of appellate court and cannot re-appreciate or re-assess the evidence and substitute its own reason on findings of facts. As a revision Court, this Court has to see is there any perversity in appreciation of evidence in the Judgment passed by the Courts below. On a reading of the judgments of the Courts below, this Court does not find any perversity and there is no merit in the revision.

16. A reading of the entire materials on record would clearly go to show that both the courts below have rightly appreciated the fact that the petitioner has not disputed the signature and execution of the cheque and taken the plea of discharge and he has not proved the discharge in the manner known to law. Therefore, trial court rightly convicted the



revision petitioner and the appellate court also rightly reappreciated the evidence and dismissed the appeal. There is no merit in the revision and there is no perversity or illegality or infirmity in the finding of the courts below and the revision is liable to be dismissed.

17. In the result, this Criminal Revision is dismissed.

18. As far as CrI.A.Nos.732 and 733 of 2019 are concerned, the Judgment is as under:-

The appellants in both Criminal Appeals are the complainants in STC.Nos.1 of 2016 and 15 of 2016 respectively. The respondent is the accused.

19. The appellants filed complaint under Section 138 of N.I.Act before Judicial Magistrate No.3, Tirupattur in STC.Nos.1 of 2016 and 15 of 2016. The learned Magistrate, after enquiry, passed the judgment of conviction on 23.03.2018 against which the respondent herein filed appeals before Principal Sessions Judge, in Criminal Appeal Nos.70 and 71 of 2018. The learned Principal Sessions Judge, after taking the appeals on file, made over the case to III Additional District and Sessions Judge, Vellore, for disposal.

20. The learned III Additional District and Sessions Judge, after hearing the appeals, allowed the appeals and set aside the judgment of the Magistrate on 10.04.2019. Challenging the judgment of acquittal passed by the 3rd Additional and District and Sessions Judge, now the present appeals are filed before this court.

21. Arguments on the side of the learned counsel for the Appellant/Complainant:-

(a) The learned counsel for the appellants would submit that the respondent has not denied the signatures in the cheques. The main contention of the respondent/accused is that he has not borrowed the money from the appellant and he has also executed the cheques to the appellants and only the main defence is that he borrowed money from one Samudi and executed the cheques, however, repaid money to the said Samudi and the said Samudi after receiving the money, has not returned the cheques



and subsequently, he misused the cheques, through the present appellants filed complaint.

(b) The respondent admitted the execution as well as borrowal from Samudi and that it is stated that he repaid the money. But the main argument is that the cheques issued to Samudi have been misused. The respondent submits that the cheques were issued to Samudi and that he repaid the amount but the said Samudi not returned cheques, but the respondent has not rebutted the presumption.

(c) Further the learned counsel for the appellants would submit that though the appellate court finds that since the appellant (STC.No.15/2016) has admitted that at the time of lending the amount, in his bank account he was having Rs.5000/- or Rs.6000/- and further he has deposed that maximum in his bank account he would have bank balance upto Rs.1,00,000/-. So appellant/complainant proved his lending capacity, whereas the respondent has not proved his defence. Once the initial burden has been proved by the appellant, it is for the respondent to rebut the presumption. Since there is no privity of contract, the passing of consideration has to be proved by the Complainant, is against the presumption clause in Section 139 of the Negotiable Instruments Act. The trial court rightly appreciated and convicted the respondent/accused. However, the appellate court failed to appreciate and consider the legal provisions and reversed the judgment of the Magistrate without any basis. Therefore, the appeal to be allowed.

22. On the other hand, the contentions raised on the side of the respondent/accused is that the respondent never borrowed money from the appellants and he only had transactions with one Samudi. The said Samudi made use of the appellants to file the complaint.

23. The learned counsel for the respondent would submit that the respondent never borrowed any money from the appellants. The appellants have not proved their lending of amounts by execution of any supporting document on the date of borrowal, but, simply they have stated that appellants lended their money without any document.



24. The case of appellants/complainant is that they gave a sum of Rs.2,00,000/- on 15.09.2015 (S.T.C.No.1/2016) and Rs.2,50,000/- on 10.10.2015 (S.T.C.No.15/2016). When they asked to repay the money, the respondent said to have issued the cheques on 15.10.2015 and 10.11.2015 respectively and when the cheques were presented for collection, the same were returned. Therefore, the appellants filed the complaints.

25. The defence taken by the respondent is that he never borrowed the money from the appellants and he never issued cheques to the appellants. Appellants have no lending capacity. Therefore, though the trial court wrongly convicted the respondent, appellate court rightly appreciated the case of the respondent and allowed the appeal and set aside the judgment of the Magistrate. There is no reason to interfere with the appellate court judgment.

26. Heard and perused the records.

27. The case of the appellants is that the respondent borrowed the money and executed the cheques and cheques were presented for collection and the same were returned as insufficient funds and thereafter, the appellants/complainants issued statutory notice. The respondent issued a reply. In the reply notice, the respondent stated that he had borrowed money from one Samudi and he had repaid the entire amount to Samudi and the respondent demanded Samudi to return back the said cheques, but the said Samudi presented the said cheques through the appellants/complainants and filed the cases. Therefore, the appellants filed the complaints. The trial court convicted the respondent and the respondent herein filed appeals. The III Additional and District Judge, Vellore, allowed the appeals and set aside the judgment of trial court.

28. Though signatures are not disputed on the cheque leaves, respondent has denied the borrowal and it is known fact that the appellants have no capacity to lend such huge amount. Further the appellants have not got any documents executed at the time of lending money. It is against normal human conduct to advance huge amount without obtaining any document. When subsequently, the appellants demanded, if at all the complainant owed money, he would have repaid the money and there is no necessity of giving cheques knowing fully well that there was no



money in his bank account. Therefore, it is clear that the respondent/accused borrowed the money from Samudi only. He issued cheques to Samudi. Though Samudi filed C.C.No.5 of 2016 and the respondent herein/accused got convicted in the said C.C., the same is challenged before the lower appellate court by the respondent/accused and the appeal in CrI.Appeal No.69 of 2018 has been dismissed by judgment dated 10.04.2019 and the same is challenged before this court by way of Criminal Revision Case No.678 of 2019 and the said Samudi is the respondent in the said Criminal Revision. The said Samudi issued the cheques given by the respondent/accused for the purpose of security were filled in the name of the appellants in both Criminal Appeal Nos.732 and 733 of 2019 and they having presented the cheques, issued legal notice and thereafter filed complaints in S.T.C.Nos.1 of 2016 and 15 of 2016. Therefore, it is for the appellants to prove that cheques were issued to discharge the legally enforceable debt. But in this case, the appellants have not proved that the respondent issued the cheques for legally enforceable debt.

29. Though Magistrate allowed the complaint and convicted the accused on the reason that the respondent has not taken any steps to get back the cheque, when the appellants issued the notice against the respondent and the respondent has not taken any steps against the appellants for issuing false notice and filing false case and further, the respondent has not taken steps to get back the cheques from Samudi also. But however, the respondent has taken the defence that he never borrowed the money from the appellants/complainants in STC.Nos.1 of 2016 and 15 of 2016. But alleged that he borrowed the money from Samudi and issued the cheques and Samudi misused the cheque.

30. The main contention is that at the time of alleged borrowal, the appellants have not obtained any documents. Without getting any documents, they said to have lent the money that too huge sum of Rs.2,00,000/- and 2,50,000/-. But, it is seen that the appellant in STC.No.15 of 2016 deposed that at the time of lending the amount, in his bank account, he was having only Rs.5,000/- or Rs.6,000/- and that maximum in his account, bank balance of Rs.1,00,000/-. In such a situation, it is clear that the appellants have no source to lend such a huge sum of Rs.2,00,000/- and 2,50,000/-. Though the presumption can be rebutted, rebuttal need not by leading direct evidence.



Rebuttal can be by way of preponderance of probabilities. It is settled position that when an accused rebut the presumption under Section 139 of the N.I. Act, the standard of proof for doing so is that of 'preponderance of probabilities'. The accused may not adduce direct evidence to prove that the cheque in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated.

31. It is settled proposition of law that an accused need not prove his case with same rigor as prosecution is required to prove its case. It is sufficient, if the defence succeeds in throwing reasonable doubt on the prosecution case. Further, it is settled proposition of law that while interfering with the judgment of acquittal by the court below, the appellate court should be very conscious. While interfering with an order of acquittal by the courts below, the appellate court must meet the reason of the court below and show how they were perverse. If two views are possible, the benefit should go to the accused. Unless there are compelling circumstances, the appellate court should not interfere with the order of acquittal. So in this case, though Magistrate convicted the respondent herein, challenging the same, the respondent herein filed appeals before the lower appellate court and the learned Judge reversed the finding and set aside the judgments of the Magistrate and against the said judgments of acquittal, the present appeals are filed.

32. In view of the above discussion, finding no merit in the criminal appeals, the Criminal Appeal Nos.732 of 2019 and 733 of 2019 are liable to be dismissed.

33. In the result,

(i) Criminal Revision Case No.678 of 2019 is dismissed.

(ii) Criminal Appeal Nos.732 and 733 of 2019 are dismissed.

Since the Criminal Revision Case filed by Revision Petitioner/Accused is dismissed, suspension of substantive sentence of imprisonment granted by this court on 15.07.2019 is



cancelled. Trial court is directed to take steps to secure the revision petitioner for sufferance of sentence.

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Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

nvsri

To

1.The III Additional Sessions Judge,
Vellore @ Tirupattur.

2.The Judicial Magistrate No.III,
Tirupattur,
Vellore District.

+2ccs to Mr.R.Selvakumar, Advocate SR.No.43147

+2ccs to Mr.S.Panneer Selvam, Advocate SR.No.43551, 43552

Cr1.A.Nos.732 & 733/2019
and Cr1.R.C.678/2019

PM(CO)
RVM(12/10/2021)