IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.1237 of 2019

V.Girija
W/o.Prabhakaran
Proprietorix /Authorized Signatory
First Floor, Rajkumar Apartment,
Door No.599, Seva Goundar Street,
Vanniar Nagar, Periya Pudhur
Alagapuram Pudhur Post, Pambarakara Vattam
Salem- 636016, Salem District
Residing at
Door No.146/65-C4, Kannadasan Street
Alagapuram Pudhur, Salem – 636016 ...Petitioner / Sole Accused

Vs

M.Sasikumar, M/42 Years
S/o.A.Muthu
Proprietor, M/s.Blue Star Leather
Door No.12-A, R.S.A. Abdulkadhar Tannery,
Bhiramana Periya Agraharam
Erode – 636005,
Erode Taluk & District ...Respondent / Complainant

Prayer : The Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C praying to call for the order passed in Crl.A.No.30 of 2019 dated 25.09.2019 by the Principal Sessions Judge, Erode, confirming the Judgment and sentence to undergo one year simple imprisonment and ordered to pay fine of Rs.5,000/- in default to undergo three months simple imprisonment by confirming the order passed in S.T.C. No.94 of 2017 dated 03.01.2018 by the Judicial Magistrate, Fast Track Court No.II, Erode and set aside the same and thereby allow the Criminal Revision Petition and consequently acquit the petitioner.

For Petitioner : Mr.T. Sundaravardanam
For Respondent : Mr.Jaga Jothi

ORDER
(The case has been heard through video conference)

This Criminal Revision Case has been filed against the order passed in Crl.A.No.30 of 2019 dated 25.09.2019 passed by the

Principal Sessions Judge, Erode, confirming the Judgment of conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.II, Erode in S.T.C. No.94 of 2017 dated 03.01.2018.

2. The petitioner is the accused and the respondent is the complainant. The respondent filed a private complaint against the petitioner under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court-II, Erode and the learned Magistrate taken cognizance of the complaint in S.T.C.No. 94 of 2017 and after enquiry, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 3 months simple imprisonment.

3. Challenging the said Judgment of conviction and sentence, the petitioner herein filed an appeal before the Principal District and Sessions Judge, Erode and the learned Principal Session Judge, taken the appeal on file in Crl.A.No.30 of 2019 and after hearing the arguments and re-appreciating the entire materials, dismissed the appeal and confirmed the Judgment of the learned Magistrate. Now, challenging the said Judgment of dismissal of appeal, the accused has filed the present revision before this Court.

4. Learned counsel for the petitioner/accused would submit that the alleged cheque was given only for security purpose. Further, the charge of dishonour of cheque and the specific case was not at all genuine and the liability of goods to the extent of Rs.19,66,655/- delivered through invoice were subsequently returned and it was not taken up for export and to prove that the petitioner had exported the goods sent by the respondent/complainant, no proof/document was produced by the respondent/complainant before the Court of law. Further, the Courts below have failed to note that the invoice quantity does not matches with the Form JJ and hence the contention of the respondent/complainant that the petitioner/accused had got the delivery of goods, is not proved. Hence, the sale of goods through invoice is not at all valid and there is no legally enforceable debt. The respondent/complainant had earlier set up one Jothimani and made a complaint dated 04.01.2017 stating that the petitioner abused him in unparliamentary words using his caste and the same was later closed on 21.02.2017 as “mistake of fact” which itself would prove that the respondent is adopting illegal method to extract money from the petitioner/accused by misusing her cheque given for security purpose.

4.1 The learned counsel further contended that the respondent/complainant never attempted to prove his case by bringing the said Deepa Leathers, Ranipet, where the goods were alleged to have been delivered, but, the respondent/complainant has produced the delivery note without authorized signature from the alleged delivery agency namely Deepa Leathers. Though the seal is mandatory for delivery note, without seal and name, the delivery note has been produced with a signature of whom is not mentioned clearly and that the said person, who made the signature was not examined before the Court. Further, the handwriting in the cheque which has been marked as Ex.P.3, differs from the signature of the petitioner/accused and the cheque has been presented in the petitioner's bank account without PAN Number which is mandatory for doing transaction for more than rupees fifty thousand. Which itself, clearly shows that the cheque was issued only for security purpose. Further, the Courts below failed to note the credit worth ability to lend such a huge sum through invoice goods when the respondent's annual business itself is less than the said amount raised in the invoice.

5. The learned counsel for the respondent would submit that the signature in the disputed cheque is admitted and the execution of the cheque is also admitted and the only defence taken by the petitioner/accused is that the cheque was issued only for security purpose. Further, she has admitted the transaction and paid part payment and failed to pay the balance consideration, for which, he sought time for repayment after sending the goods. Therefore, both the trial Court as well as the lower appellate Court have rightly appreciated the evidence and after considering the oral and documentary evidence, convicted the petitioner/accused. Since, the petitioner has no valid defence, he is taking evasive false defence in order to protract the payment of cheque and there is no merit in the revision and the revision is liable to be dismissed.

6. Heard the learned Counsel for the petitioner and learned Counsel for the respondent and perused the materials on records.

7. The case of the respondent/complainant is that, he is doing leather business in the name and style of “Blue Star Leather” at Erode and the accused is also doing leather business in the name and style of “Senthur Exim” and she is its sole proprietorix/authorized signatory. The petitioner / accused had purchased the leather goods, namely, Wed Blue Sides and Wet Blue Hides from the respondent/complainant on credit basis under Invoice No.22, dated 08.02.2016 for a sum of Rs.19,66,655/- and the same was delivered to the petitioner/accused, for which she had issued a cheque dated 03.09.2016 bearing No.000023 drawn at Ratnaka Bank Limited, 103/105, Sriram Nagar, Saradha College Road, Salem branch. The said cheque was presented for collection by the respondent / complainant through Indian Overseas Bank,

Periyasemur branch on 03.09.2016, but the same was returned on 05.09.2016 as "Funds Insufficient". Thereafter, as per the instruction of the petitioner/accused, the respondent / complainant represented the cheque for collection on 20.11.2016, but again it was dishonoured on 22.11.2016 for the reason "Funds Insufficient". The petitioner / accused knowing fully well that there was no sufficient amount in her account, had issued the cheque in order to cheat and defraud the respondent / complainant. Therefore, statutory notice dated 12.12.2016 was issued by the respondent / complainant to the petitioner / accused to her office address as well as to her residence address, calling upon her to pay the due under the cheque within 15 days from the date of receipt of notice. The notice addressed to the residence of the petitioner /accused was received on 15.12.2016 however, the official addressed cover was returned on 15.12.2016 with an endorsement "left without instruction". Subsequently, the petitioner/accused issued a reply notice dated 31.12.2016 with false averments and not paid the amount. Hence, the complaint.

8. The learned Counsel for the petitioner taken the defence that the husband of the petitioner was examined as D.W.2 and he has deposed that the petitioner is nothing to do with the transaction, which infact held between him (D.W.2) and the respondent and that the petitioner is only an agent of the leather goods and name lender and she has not actively participated and not doing any business. As an agent, she visited the godown of the respondent and after seeing the leather goods, the respondent asked the petitioner to execute a cheque for security purpose. Therefore, she executed the cheque and there was no transaction between the petitioner and the respondent and that the leather goods were not taken from the respondent. Therefore it is not legally enforceable debt. However, a perusal of records shows that the petitioner has not disputed the signature and not denied the execution of cheque. The only defence is that she had executed the cheque for security purpose. If at all the petitioner, who is wife of D.W.1 does not have any liability, there is no explanation for what reason the petitioner signed the disputed cheque.

9. The petitioner herself admitted the signature and execution of cheque for security purpose. Even issuance of cheque for security purpose also falls under legally enforceable debt, unless it is proved that the cheque was not issued for legally enforceable debt. Therefore, the presumption under Section 139 of Negotiable Instrument Act would come into play and it is for the the accused to rebut the presumption in the manner known to law.

10. No doubt, to rebut the presumption, the petitioner/accused need not let any direct evidence by coming

into witness box and it can be rebutted through preponderance of probability. Though, in this case, on the side of the petitioner, 2 witnesses were examined, however, a reading of the entire materials shows that the transaction between the petitioner/accused and respondent/complainant has been proved by the respondent/complainant and the execution of cheque has also been proved. Once the accused has not denied the execution of cheque, then it is for the accused to rebut the presumption.

11. The learned Magistrate rightly appreciated the entire evidence and invoked the presumption under Section 139 of NI Act and found the guilt of the petitioner/accused for the offence under Section 138 of Negotiable Instrument Act. Further, the appellate Court as a final Court of fact finding, by re-appreciating the entire evidence, found that the signature was admitted and the execution of cheque has not been denied and that the petitioner has not proved that she has no access with the business and only her husband had transaction. Once it is admitted by the petitioner that she signed the cheque as proprietorix and issued the same to the respondent for security purpose, then the Court can draw the presumption and it is for the accused to rebut the same in the manner known to law.

12. The scope of the revision Court is very limited. The revisional Court cannot re-appreciate or re-visit the entire oral and documentary evidence with regard to the findings of the fact by the appellate Court unless the Court finds that there is perversity in appreciation of evidence. Normally the revisional Court will not interfere with the Judgment of the Courts below, unless there exist perversity in appreciation of evidence by the Courts below.

13. A reading of the entire materials, this Court does not find any perversity or illegality in appreciation of the evidence by the Courts below and there is no merit in the revision and the revision is liable to be dismissed.

14. Accordingly, this Criminal Revision case is dismissed.

Sd/-
Assistant Registrar(CS-VII)

/ True Copy //

Sub Assistant Registrar

ksa-2/dsn

To

1.The Principal Sessions Judge,
  Erode

2.The Judicial Magistrate,
  Fast Track Court No.II,
  Erode.

+1cc to Mr.T.Sundaravadanam, Advocate SR.No.49198

+1cc to Mr.V.Balamurugane, Advocate SR.No.48961

Crl.RC.No.1237 of 2019

NMI(CO)
RVM(03/01/2022)