BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 17.02.2021
Pronounced on : 26.03.2021
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C.(MD).473 of 2017

R.Loganathan : Petitioner / Appellant / Accused

Vs.

1.R.Gopalakrishnan : 1st Respondent / 1st Respondent/ Complainant

2.The State represented by
The Public Prosecutor,
Office of the Public Prosecutor,
High Court Buildings,
Madurai – 23. : 2nd Respondent/ 2nd Respondent/ Formal Party

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for entire records relating to the impugned judgment of conviction and sentence passed by the learned Principal Sessions Judge, Dindigul District, Dindigul made in C.A.No.10 of 2015, dated 16.09.2016 by confirming the judgment of conviction and sentence passed by the learned Judicial Magistrate No.II, Dindigul in C.C.No.23 of 2014, dated 02.02.2015. in convicting the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo a simple imprisonment of 3 months and also directed to pay the cheque amount of Rs.9,32,000/- as compensation to the 1st respondent and set aside the same.

For Petitioner : Mr.A.Saravanan

For 1st Respondent : Mr.D.Ramesh Kumar

For 2nd Respondent : No Appearance

ORDER

The Criminal Revision Case is directed against the concurrent judgments of conviction passed in C.A.No.10 of 2015, dated 16.09.2016 on the file of the Principal Sessions Judge, Dindigul, confirming the judgment passed in C.C.No.23 of 2014, dated 02.02.2015 on the file of the learned Judicial Magistrate No.II, Dindigul.

2.The revision petitioner is the accused. The first respondent has filed a complaint against the revision petitioner/appellant / accused under Section 138 and 142 of Negotiable Instruments Act.

3.For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the trial Court.

4.The case of the complaint is that the accused on 31.08.2013 to meet out his urgent and family expenses and for development of his concern Harshini Cars, borrowed a sum of Rs.9,32,000/- from the complainant and agreed to repay the same within two months, that in order to discharge the said loan, he issued a cheque bearing No.012503, dated 31.10.2013 drawn on the HDFC Bank, Dindugul Branch, that the complainant has sent the cheque for collection on 04.11.2013 through his Banker, AXIS Bank, Dindigul Branch, that the said cheque was returned dishonoured on 07.11.2013 for want of funds in the bank account of the accused, that the complainant has then sent a legal notice, dated 20.11.2013 demanding payment of the amount covered by the cheque, that though the accused has received the said notice on 21.11.2013, he has neither sent any reply nor paid any amount and that therefore, the complainant was constrained to lodge a complaint under Sections 138 and 142 of the Negotiable Instruments Act.

5.The learned Judicial Magistrate, after receipt of the complaint, has recorded the sworn statement of the complainant and on perusing the records, after satisfying that there existed a prima facie case, has taken the case on file in C.C.No.23 of 2014 for the offence under Section 138 of Negotiable Instruments Act and ordered issuance of summons to the accused. After appearance of the accused, copies of the records were furnished to him under Section 207 Cr.P.C on free of costs. When the accused was questioned about the offence alleged against him, he denied the commission of offence and pleaded not guilty.

6.During trial, the complainant has examined himself as P.W.1 and exhibited 6 documents as P.W.1 to P.W.6. After closure of the complainant side evidence, when the accused was questioned under Section 313 (1) (b) of Cr.P.C, he denied the complaint side evidence as false and further stated that he is having defence evidence. But, subsequently the accused has adduced neither oral nor documentary evidence.

7.The learned Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the judgment on 02.02.2015, convicting the accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo three months simple imprisonment and to pay a compensation of

Rs.9,32,000/- within a period of 30 days, in default to undergo one month simple imprisonment. Aggrieved by the said judgment of conviction, the accused has preferred an appeal in C.A.No.10 of 2015, on the file of the Principal Sessions Court, Dindigul and the Appellate Court, upon perusing the records and on hearing both sides has passed the impugned judgment on on 16.09.2016, dismissing the appeal and thereby confirming the judgment of conviction passed in C.C.No.23 of 2014, dated 02.02.2015 by the learned Judicial Magistrate No.II, Dindigul. Aggrieved by the said dismissal of the criminal appeal, the accused has come forward with the present revision.

8.Whether the concurrent judgments of conviction passed in criminal appeal in C.A.No.10 of 2015, dated 16.09.2016 on the file of the Principal Sessions Court, Dindigul and in the case in C.C.No.23 of 2014, dated 02.02.2015 on the file of the Court of Judicial Magistrate No.II, Dindigul are liable to be set aside ? is the point for consideration.

9. At the outset, it is necessary to refer the Sections 118 (a) and 139 of the Negotiable Instruments Act, which deal with the statutory presumption :

"118. ...

> (a) of consideration ; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;
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> 139.Presumption in favour of holder. 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."

10. It is the specific case of the complainant that the accused borrowed a sum of Rs.9,32,000/- on 31.08.2013 to meet out his urgent and family expenses and for the development of his concern Harshini Cars, that the accused had agreed to repay the said amount within two months and issued a cheque dated 31.10.2013 drawn on the HDFC Bank, Dindugul Branch under Ex.P.1, that when Ex.P.1 cheque was sent for collection through his Banker, Axis Bank, Dindigul Branch vide bank challan dated 04.11.2013 under Ex.P.2, the same was returned dishonoured for insufficient funds vide bank memo dated 07.11.2013 under Ex.P.3, that the complainant has then sent a legal notice dated 20.11.2013 under Ex.P.4 through registered post under Ex.P.5 receipt, that the accused has received the said statutory notice on 21.11.2013, vide post acknowledgement under Ex.P.6 and that since the accused has neither sent any reply nor made any payment, the complainant was forced to prefer the complaint against the accused for the offence punishable under Sections 138 and 142 of Negotiable

Instruments Act.

11. The complainant as P.W.1 in his evidence before the trial Court would reiterate the contentions in the complaint. As rightly contended by the learned counsel for the complainant, even after the receipt of the statutory notice, the accused has not chosen to send any reply. Though the accused at the trail has disputed the very borrowal and issuance of the cheque therefor, he has not utilized the earliest opportunity to putforth his defence by sending reply in response to the complainant's legal notice.

12.It is evident from the records that P.W.1 in his evidence has deposed about the liability of the accused, issuance of cheque therefor, dishonour of the cheque on the ground of insufficient funds, issuance of the statutory notice and the failure of the accused to pay the amount within stipulated time. As rightly pointed out the the learned counsel for the complainant, though P.W.1 was subjected to cross examination at length, nothing was elicited and his evidence about the loan transaction and the issuance of cheque therefor was not at all shaken. Considering the evidence available, as rightly contended by the complainant side, the trial Court as well as the Appellate Court have rightly drawn the presumption under Sections 139 and 118 of Negotiable Instruments Act in favour of the complainant.

13.As rightly contended by the defence side, the presumption under Section 118 and 139 of Negotiable Instruments Act are rebuttable in nature and once acceptable rebuttable come from the defence, then the burden shifts to the complainant to prove by definite evidence that the rebuttal is liable to be brushed aside. It is settled law that the accused in order to rebut the presumption drawn in favour of the complainant under Section 118 and 139 of Negotiable Instruments Act, is not required to adduce any evidence and he can very well prove his probable defence through evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

14.In the present case, it is pertinent to note that the defence of the accused is of total denial. The accused has disputed the very borrowal of loan and the issuance of the cheque therefor. According to the accused, when he had parked his Car in his office premises on 10.04.2012, he forgot to take the cheque book from his car and later came to know that one cheque leaf was found missing. It is his further case that on the same day, he gave a complaint before the Thadikombu Police Station and also to his bankers. According to the accused, the complainant had stolen the said cheque, filled up the particulars, forged his signatures and lodged a complaint, now under consideration.

15.As rightly observed by the trial Court as well as the Appellate Court, the accused has not produced the copy the complaint filed before the police nor the receipt issued therefor. He has also not chosen to produce the copy of the letter sent to his bankers nor the acknowledgment taken from the bank. It is not the specific case of the accused that after coming to know about the missing of the cheque, he has requested his bankers to stop payment, in case if the cheque is received for collection.

16.The learned counsel for the revision petitioner would contend that the Courts below failed to consider the vital contradictions in the evidence of P.W.1. In the notice as well as in the complaint, the complainant alleged that the amount has been paid on 31.10.2013. No doubt, the complainant P.W.1 in his cross examination would say that he advanced loan amount on 31.08.2014 and that the accused has filled up the cheque on 31.10.2014. But, in the notice as well in the complaint and in his evidence, he has specifically stated that the accused borrowed the loan amount on 31.08.2013 and issued the cheque dated 31.10.2013. As rightly observed by the trial Court, the complaint itself was filed on 26.12.2013 before the Court of the Judicial Magistrate, Dindigul and as such, the question of filling up the disputed cheque on 31.10.2014 does not arise at all and as such, the above contradiction, in the evidence of P.W.1 cannot be considered as material.

17.During cross examination of P.W.1, it was suggested by the defence that the accused had stolen the cheque and forged the signature, for which, the complainant would deny the suggestion. Admittedly, the accused has not taken any steps to send the disputed cheque to forensic laboratory to show that the signatures found in Ex.P.1 cheque are not his signatures.

18.In the revision memorandum, he has taken a ground that the cheque in question was forged by the complainant with the help of one Manjunath, who is having previous enmity with the accused. But the accused has nowhere whispered about the said Manjunath. As already pointed out, the accused has not chosen to enter into the witness box nor examined any other witness. Though the accused has alleged that the complainant is not having capacity to advance such loan amount and that there is no need or necessity for him to borrow that amount from the complainant, the accused has not produced any iota of evidence to substantiate the same. Except putting suggestions, which were all denied by the complainant, the accused has neither shown nor established that the defence canvassed by the accused is probable and reasonable one.

19.Considering the above, the finding of the trial Court as well as the Appellate Court that the accused has failed to rebut the statutory presumption under Section 139 of Negotiable Instruments Act cannot be found fault with. Consequently, this Court decides that the finding of the Courts below that the accused is guilty of the offence under Section 138 of Negotiable Instruments Act cannot be found fault with and this Court is in entire agreement with the concurrent judgments of conviction passed.

20.Now coming to the punishment awarded, as already pointed out, the learned Magistrate has convicted the accused and sentenced him to undergo three months simple imprisonment and to pay compensation of Rs.9,32,000/- and in default to undergo one month simple imprisonment and the learned Appellate Judge has also confirmed the sentence imposed by the trial Court.

21. Considering the nature of the offence and also the quantum of the cheque amount, the sentence imposed by the trial Court is very much reasonable and cannot said to be excessive. Hence, there is no reason to interfere with the concurrent judgments passed by the Courts below and consequently, this Court concludes that the criminal revision, which is devoid of merits, is liable to be dismissed.

22.In the result, the Criminal Revision case is dismissed. The trial Court is directed to take necessary steps to secure the petitioner/accused to undergone remaining period of imprisonment, if any.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Principal Sessions Judge,
Dindigul District, Dindigul.

2.The Judicial Magistrate No.II,
Dindigul.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. 2 Copy

+1 CC to M/s.A.SARAVANAN, Advocate (SR-13805[F] dated 26/03/2021)

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