BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 25.02.2021
Pronounced on : 31.03.2021
CORAM
THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC(MD).No. 860 of 2017 and
Crl.M.P(MD).No. 10581 of 12017

Devaraj : Petitioner / Accused

Vs.

V.T. Manikandan : Respondent / complainant

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the Judgment in C.A.No.47 of 2016 dated 04.05.2017 on the file of the VI Additional District and Sessions Judge, Madurai and the order in STC.No.659 of 2013, dated 25.05.2016 on the file of the Judicial Magistrate, Fast Tack Court No.II, Madurai.

For petitioner : Mr. J. Gunaseelan Muthiah

For Respondent : Mr. Suriya Narayanan

ORDER

This Criminal Revision is directed against the Judgment passed in C.A.No.47 of 2016, dated 04.05.2017 on the file of the VI Additional District and Sessions Judge, Madurai reversing the Judgment of acquittal passed in S.T.C.No.659 of 2013, dated 25.05.2016 on the file of the Judicial Magistrate, FTC -II, Madurai.

2. The accused is the revision petitioner. The respondent / complainant has filed a complaint against the revision petitioner / accused under Sections 138 and 142 of the Negotiable Instruments Act,.

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

4. The case of the complainant is that himself and accused are close friends, that the accused borrowed a sum of Rs.15,00,000/- from the complainant on several occasions during the period from June 2007 till June 2010, that the accused has paid interest then and there, that the accused has then issued a cheque bearing No.456716, dated 15.09.2012 for Rs.15,00,000/-, drawn on Tamil Nadu Mercantile Bank, Nagamalai Pudukottai Branch, Madurai towards the discharge of the said liability, that the complainant has presented the said cheque through his Banker City Union Bank, SS Colony

Branch, Madurai on 26.09.2012 and the cheque was returned with an endorsement that the account was blocked, that the complainant has then sent a legal notice, dated 26.10.2012 demanding the amount covered by the cheque, that the accused has received the said notice on 29.10.2012, but, he has not paid any amount, that he sent a reply dated 05.12.2012 containing false allegations, that the accused has issued the cheque fully knowing well that his account was blocked and there was no sufficient funds in his account and that since the accused has not complied with the notice demand, the complainant was constrained to file the complaint under sections 138 and 142 of the Negotiable Instruments Act.

5. The learned Judicial Magistrate, after receiving 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 under section 138 of the Negotiable Instruments Act in STC.No.659 of 2013 and ordered issuance of summons to the accused. After appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C., on free of cost. 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 PW.1 and exhibited 5 documents as Exs.P1 to P5. After closure of the complainant side evidence, when the accused was questioned under Section 313(1)(b) Cr.PC., he denied the complainant's side evidence as false and stated that a false case has been foisted against him. The accused has examined himself as DW.1 and adduced no documentary evidence.

7. The learned Judicial Magistrate, upon considering the evidence adduced and the arguments advanced, has passed the Judgment on 25.05.2016, by holding that the offence under Section 138 of the Negotiable Instruments Act, was not proved, dismissed the case and acquitted the accused under Section 255(1) Cr.P.C., Aggrieved by the Judgment of the acquittal, the complainant has preferred an appeal in C.A.No.47 of 2016 and the learned VI Additional District and Sessions Judge, Madurai upon perusing the materials and on hearing the arguments of both sides, has passed the impugned Judgment on 04.05.2017 setting aside the Judgement of acquittal, dated 25.05.2016 passed by the learned Judicial Magistrate and convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and to pay Rs.15,00,000/- as compensation under Section 357 (3) Cr.P.C., within a period of three months. Not satisfied with the Judgment of the conviction, the accused has come forward with the present revision.

8. Whether the impugned Judgment of conviction passed in C.A.No.47 of 2016, dated 04.05.2017 on the file of the VI Additional District and Sessions Judge, Madurai reversing the

Judgment of acquittal passed in S.T.C.No.659 of 2013, dated 25.05.2016 on the file of the Judicial Magistrate, FTC -II, Madurai is liable to be set aside? is the point for consideration.

9. Before entering into the further discussion, it is necessary to refer Sections 139 and 118(a) of the Negotiable Instruments Act, which deal with the statutory presumptions.

> *118.Presumptions as to negotiable instruments- Until the contrary is proved, the following presumptions shall be made: -*
> *(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.*
>
> *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 being his close friend borrowed a sum of Rs.15,00,000/- during the period between June 2007 and June 2010, that the accused in order to discharge the liability has issued a cheque bearing No.456716, dated 15.09.2012 for Rs.15,00,000/-, drawn on Tamil Nadu Mercantile Bank, Nagamalai Pudukottai Branch, Madurai under Ex.P1 in favour of the complainant, that the complainant has presented the said cheque for collection through his bankers City Union Bank, SS Colony Branch, Madurari on 26.09.2012, that the cheque was returned for the reason "Account Blocked" vide Tamil Nadu Mercantile Bank Memo, dated 26.09.2012 under Ex.P2, that the complainant has then sent a legal notice, dated 26.10.20212 demanding payment of the amount covered by the cheque under Ex.P.3 and the same has been received by the accused on 29.10.2012 vide postal acknowledgment under Ex.P4, that the accused has sent a reply notice dated 05.12.2012 containing false allegations under Ex.P5 and that since the accused has not made any payment, the complainant was constrained to file a complaint against the accused for the offence under Sections 138 and 142 of the Negotiable Instruments Act.

11. It is evident from the records that the complainant as PW.1 has given evidence reiterating the complaint contentions and deposed about the liability of the accused, issuance of cheque therefor, dishonour of cheque for want of sufficient funds, issuance of the statutory notice and the failure of the accused to pay the amount within the stipulated time. The defence of the accused, as evident from his reply notice and the evidence is that he borrowed a

sum of Rs.1,00,000/- from the complainant to meet out his family expenses and to clear the sundry debts, that in order to discharge the said loan, he issued a cheque bearing No.456716, drawn on Tamil Nadu Mercantile Bank, Nagamalai Pudukottai Branch, Madurai on 20.12.2008 along with a unfilled and signed promissory note, that the accused has repaid the entire amount of Rs.1,00,000/- on 01.01.2011 in the house of the complainant, that though the complainant has agreed to return the promissory note and the cheque, he has been postponing the same on some pretext or the other, that since the complainant has lastly refused to return the documents, the accused was forced to prefer a complaint on 03.03.2011 to the Checkanoorani Police and the District Superintendent of Police, Madurai, that as per the advice of the Sub Inspector of Police, Checkanoorani Police Station, a Panchayat was held and at that time, the complainant had promised to return the documents, but subsequently informed that he had lost the said documents and that therefore, the accused is not liable to pay any amount to the complainant.

12. It is pertinent to mention that the accused has specifically admitted that Ex.P1 cheque was belonging to him and also the signature found in Ex.P1 cheque. On considering the evidence of the complainant and also the admission of the accused with respect to Ex.P1 cheque and the signature found therein, as rightly contended by the complaint's side, the learned Appellate Judge has rightly drawn the presumption under Sections 139 and 118 of the Negotiable Instruments Act. No doubt, as rightly contended by the defence, the presumption available under Sections 118 and 139 of the Negotiable Instruments Act are always rebuttable in nature.

13. The learned counsel appearing for the accused has relied on the decision of the Hon'ble Supreme Court reported in ***2019 (5) SCC 418*** in the case of ***Basalingappa Vs. Mudibasappa*** and the Hon'ble Apex Court, after considering the various decisions has summarized the principles enumerated by the Supreme Court;

<u>In para No.23:</u>

> *"23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:*
>
> *(i) 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.*
>
> *(ii) 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.*
>
> *(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also*

rely on the materials submitted by the complainant in order to raise a probable defence. Inference 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.

(iv) That it 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.

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

14. Considering the above, it is very much clear that the position of law is well settled that the accused in order to rebut the presumption drawn in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act, is not required to adduce any evidence and he can prove his probable defence, through the evidence adduced by the complainant and that the standard of proof required is of preponderance of probabilities.

15. No doubt, the accused in his reply notice under Ex.P5 has stated that the complainant is neither his relative nor his friend, but in chief examination itself he would say that the complainant is his friend and that he had obtained a hand loan of Rs.1,00,000/- in the year 2008. In cross examination, he would admit that he was having dealership for Sonalika Tractors for Aruppukottai Region, that the complainant was having dealership for the said Tractors for Madurai Region and that he had purchased a Tractor from the complainant on 26.06.2009 and issued a cheque but the same was returned.

16. As rightly contended by the learned counsel appearing for the complainant, no one can advance hand loan to the tune of Rs.1,00,000/- to any stranger, as the accused himself had admitted that he had taken a hand loan of Rs.1,00,000/- from the complainant. Considering the above, the very contention of the accused in his reply notice that the complainant is neither his friend nor his relative, even according to his own evidence, is proved to be false. Considering the dealership for a particular brand of Tractor held by both the complainant and the accused for different region and also the fact that the accused had already purchased one Tractor from the complainant, as rightly observed by the Appellate Court, there existed business relationship between the parties.

17. The next contention of the accused is that the complainant is not having the capacity to advance the loan of Rs.15,00,000/-. The complainant in his cross examination, would admit that he has been paying income tax. As already pointed out, the complainant is owning dealership for particular brand of Tractor for Madurai Region and the accused himself would admit that he purchased the Tractor from the complainant for Rs.3,85,000/- and the

cheque issued towards the sale price was returned and that he was given hand loan of Rs.1,00,000/- in the year 2008 itself. As rightly observed by the Appellate Court, the above would go to disprove the case of the accused regarding the capacity or wherewithal of the complainant to advance the loan amount.

18. No doubt, the complainant in his evidence would admit that he had not shown the advancement of loan of Rs.15,00,000/- in his income tax return. The learned Appellate Judge has rightly dealt with that issue and that non disclosure of the said amount and the alleged non payment of tax are the issues to be sorted out between the complainant and the Income Tax Department and the accused has nothing to take advantage of it. The accused in his cross examination before the trial Court would say that his account was not blocked and the same is still in operation and he would admit that he has not produced any document to prove the same. As already pointed out, when the cheque was presented for collection by the complainant, the accused banker Tamil Nadu Mercantile Bank has issued a memo under Ex.P2 giving reason for return as account blocked. The accused has not chosen to produce his Bank statement nor summoned the bank officials to show that his account was not blocked and the same is alive.

19. The accused has examined one Paraman as DW.2 and said witness would say that he had accompanied the accused to the complainant's house for demanding the return of documents and that he had participated in the panchayat. It is pertinent to mention that the accused in his Ex.P5 reply notice has stated that he had visited the complainant along with one Dinakaran, S/o. Sundarrajan and he has nowhere whispered about DW.2 Paraman. The accused has not chosen to examine the said Dinakaran, S/o. Sundarrajan and he has not offered any explanation for non examining the said Dinakaran. Though the accused has stated that he preferred a complaint before the Checkanoorani Police and to the District Superintendent of Police, Madurai and as per the advice of the Sub Inspector of Police, Checkanoorani Police Station, Panchayat was convened, he has not chosen to produce any evidence to substantiate the above aspects. It is pertinent to mention that the accused in his cross examination would admit that on 26.09.2012 he was not having Rs.15,00,000/- in his bank account.

20. Considering the above, as rightly contended by the learned Appellate Judge, the accused has miserably failed to rebut the presumption drawn in favour of complainant under Section 139 of the Negotiable Instruments Act and as such, question of shifting of burden again to the complainant does not arise at all. Hence, the decision of the learned Appellate Court reversing the Judgment of the acquittal passed by the learned Judicial Magistrate and convicting the accused under Section 138 of the Negotiable Instruments Act cannot be found fault with.

21. Coming to the punishment awarded, as already pointed out, the Appellate Court has sentenced the accused to undergo one year Simple Imprisonment and to pay compensation of Rs.15,00,000/- within a period of three months time. The Hon'ble Supreme Court in ***Meters and Instruments Private Limited Vs. Kanchan Mehta reported in 2017(3) MWN (Criminal) DCC 161 (SC)*** has specifically held that the offence under Section 138 of Negotiable Instruments Act related to a civil wrong and the same was a " regulatory offence" and that the object was described as punitive as well as compensatory. It is very much clear that intention of the provision is not only to punish the accused, but at the same time, aggrieved party is to be compensated . Considering the nature of offence and also quantum of the cheque amount, the punishment awarded by the Appellate Court is very much reasonable and the same cannot be said to be excessive. The defence has not shown any other special reason or mitigating circumstances to modify the punishment imposed. Hence, this Court concludes that there is absolutely no infirmity in the impugned judgment and the same is liable to be confirmed and is confirmed.

21. In the result, the Criminal Revision is dismissed and the Judgment of conviction passed in C.A.No.47 of 2016, dated 04.05.2017 on the file of the VI Additional District and Sessions Judge, Madurai is confirmed. The trial Court is directed to take necessary steps to secure the accused to undergo the remaining period of sentence, if any. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

1. The VI Additional District and Sessions Judge, Madurai.
2. The Judicial Magistrate, Fast Tack Court No.II, Madurai.

Copy to

The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)
+1 CC to M/s.J.GUNASEELANMUTHIAH, Advocate (SR-15043[F] dated 01/04/2021)

order made in
CRL.RC(MD).No. 860 of 2017 and
Crl.M.P(MD).No. 10581 of 12017
31.03.2021

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