



Crl.R.C.No.429 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.429 of 2019

Anbuselvan	...	Petitioner
	Vs.	
Smt.Savithiri	...	Respondent

This Criminal Revision case has been filed under Sections 397 r/w 401 of Code of Criminal Procedure to call for the records and set aside the judgment in C.A.No.46 of 2017, dated 11.09.2018 on the file of the I Additional District and Sessions Judge, Coimbatore, modifying the judgment and conviction in S.T.C.No.80 of 2012, dated 04.02.2017, on the file of the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore.

For Petitioner : Mrs.S.Selvakumari

For Respondent : Mr.K.S.Karthik Raja

ORDER

This Criminal Revision Case has been filed challenging the Judgment dated 11.09.2018 passed by the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.46 of 2017, modifying the judgment of conviction and sentence, dated 04.02.2017, passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore in S.T.C.No.80 of 2012.

Page No.1/9



Crl.R.C.No.429 of 2019

2. The petitioner is the accused and the respondent is the complainant.

The respondent/complainant filed a complaint under Section 138 of Negotiable Instruments Act (In short "the Act") for dishonour of cheque. The said case was registered as S.T.C.No.80 of 2012. After contest, the learned Judicial Magistrate, Fast Track Court at Magisterial Levell-II, Coimbatore, passed an order convicting the petitioner-accused for the offence punishable under Section 138 N.I. Act and directed the petitioner/accused to undergo simple imprisonment for a period of one year and to pay compensation of a sum of Rs.9,36,000/- to the respondent/complainant within a period of one month, in default, to undergo simple imprisonment for six months. Challenging the said judgment of conviction and sentence, the revision petitioner filed an Appeal before the learned District Sessions Judge and the same was made over to the learned I Additional District & Sessions Judge, Coimbatore in Crl.A.No.46 of 2017 for disposal. The learned I Additional District & Sessions Judge, Coimbatore, partly allowed the appeal by modifying the conviction from one year to six months and the compensation from Rs.9,36,000/- with 9% interest to Rs.6,00,000/- within a period of one month, in default, to undergo simple imprisonment for two months. Challenging the order and judgment, the revision petitioner/accused is before this Court.



Crl.R.C.No.429 of 2019

3. The learned counsel for the revision petitioner would submit that the trial Court as well as the appellate Court failed to consider that the petitioner has not at all borrowed a sum of Rs.6,00,000/- from the respondent and only he borrowed a sum of Rs.1,00,000/- from the husband of the respondent and repaid the said sum on several occasions. At the time of borrowal, he issued a promissory notes as well as blank cheques. The respondent altered the promissory note from Rs.1,00,000/- to Rs.6,00,000/- and also filled the cheques and subsequently filed false case against the petitioner. On appeal, the Appellate Court also did not consider the contention of the revision petitioner, however modified the compensation amount from Rs.9,36,000/- to Rs.6,00,000/-. Though the revision petitioner/accused need not rebut the presumption by direct evidence, the accused can always rebut the presumption by preponderance of probabilities. Though the revision petitioner rebutted presumption, both the Courts failed to appreciate the oral and documentary evidence and wrongly convicted the revision petitioner, which warrants interference.

4. The learned counsel for the respondent would submit that as the revision petitioner admitted the borrowal of money, execution of promissory notes as well as the issuance of cheques and signature, the trial Court rightly



Crl.R.C.No.429 of 2019

invoked the presumption under Section 139 of the N.I. Act and initial burden has been proved by the respondent-complainant. Therefore, the onus of proof has been shifted to the revision petitioner, whereas the revision petitioner has not discharged his onus and he has not rebutted the presumption in the manner known to law. Though the revision petitioner in one place has stated at the time of borrowal in the year 2004, he gave blank cheques and also promissory notes, whereas, in the reply notice, he has stated in the year 2007, the husband of the respondent obtained blank cheques by threat and coercion in the year 2007. When already the respondent obtained various blank cheques and pro-notes from the revision petitioner, what is the necessity to insist of obtaining of further blank cheques and other documents in the year 2007. Even otherwise, the revision petitioner has not made any complaint before the police. Therefore, the revision petitioner is taking different stand in different stages. Therefore, the trial Court rightly appreciated the evidence, and however, the appellant Court reduced the sentence and modified the compensation, which does not call for any interference by this Court.

5. Heard the learned counsel on either side and perused the materials available on record.



Crl.R.C.No.429 of 2019

6. Admittedly, the respondent filed a complaint before the learned Judicial Magistrate under Section 138 of the Negotiable Instruments Act and the same was taken on file in S.T.C.No.80 of 2012, which ultimately ended in conviction against the petitioner.

7. This Court, while granting suspension of sentence in Crl.M.P.No.6553 of 2019, directed the petitioner to deposit a sum of Rs.3,00,000/- to the credit of S.T.C.No.80 of 2012, on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, and accordingly, the petitioner has also complied with the direction issued by this Court.

8. The only defence taken by the revision petitioner is that he has not borrowed the money from the respondent to a sum of Rs.6,00,000/- and executed the disputed cheque. According to the revision petitioner, he borrowed only a sum of Rs.1,00,000/- from the husband of the respondent and he repaid a sum of the amount on several occasions towards interest and principal, he has to pay only the balance of Rs.50,000/-. It is his further case that the respondent filled the blank cheques and filed a false case against him.



Crl.R.C.No.429 of 2019

9. It is to be noted that once execution of cheque and signature found on the same is admitted then presumption under Section 118 and 139 would come into play and it is for the accused to rebut the same in the manner known to law. A reading of the reply affidavit filed by the revision petitioner and his evidence during cross-examination and also grounds of appeal filed before the Court, the revision petitioner has taken different stand on different occasions and improved his defence, but however, none of the defences have been substantiated through evidence. Therefore, once the Court has drawn the statutory presumption and the complainant has proved her case, it is for the accused to rebut the presumption in the manner known to law.

10. A reading of the entire materials, it could be seen that the petitioner has not rebutted the presumption in the manner known to law. Though the trial Court convicted the revision petitioner for the offence under Section 138 of the NI Act, and sentenced him to undergo one year rigorous imprisonment and to pay compensation of Rs.9,36,000/-, in default to undergo simple imprisonment for six months, the appellate Court, modified the sentence from one year to six months and reduced the compensation from Rs.9,36,000/- with 9% interest to Rs.6,00,000/- within a period of one month, in default, to undergo simple imprisonment for two months. Though such a



Crl.R.C.No.429 of 2019

leniency has been shown, the revision petitioner has not availed the benefit of the said order and preferred the present Revision. In view of the above, this Court does not find any reason to interfere with the order of the Court below. The trial Court is directed to secure the accused to undergo the remaining period of sentence, as upheld by the learned I Additional District and Sessions Judge, Coimbatore.

11. In the result, the Criminal Revision Case is dismissed and the order dated 11.09.2018 passed by the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.46 of 2017, is confirmed.

14.09.2022

Speaking Order : Yes.

Index : Yes.

r n s

Page No.7/9



Crl.R.C.No.429 of 2019

To

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, Fast Track Court
at Magisterial Level-II, Coimbatore.



WEB COPY



Crl.R.C.No.429 of 2019

P.VELMURUGAN, J.,

r n s

Crl.R.C.No.429 of 2019

14.09.2022