



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.1561 of 2016

and Crl.MP.Nos.12808 & 12809 of 2016

G.Thenmozhi

...Petitioner/Appellant

Vs.

N.Subramanian

...Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., against the order of Principal Sessions Judge, Namakkal in C.A.No.46 of 2015 dated 01.09.2016 against the judgment of the learned Judicial Magistrate (Fast Track Court) at Tiruchengode in S.T.C.No.128 of 2015 dated 05.11.2015 confirming the conviction and sentence imposed by the Judicial Magistrate (Fast Track Court), Tiruchengode for the offence under Section 138 of N.I. Act.

For Petitioner : Mr.C.D.Johnson

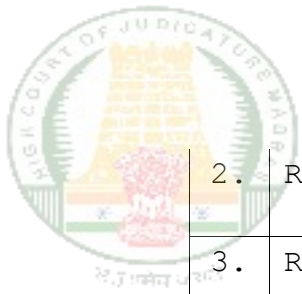
For Respondent : Mr.A.Sundaravadhanan

ORDER

This Criminal Revision Case has been filed challenging the judgment of the learned Principal Sessions Judge, Namakkal dated 01.09.2016 passed in CA.No.46 of 2015 which confirmed the judgment of the learned Judicial Magistrate (Fast Track Court), Tiruchengode dated 05.11.2015 passed in STC.No.128 of 2015.

2. This case has arisen out of a private complaint given by the respondent under Section 138 of Negotiable Instruments Act. The allegation of the complainant is that the petitioner/accused had borrowed a loan of Rs.2,00,000/- from the respondent for his urgent financial commitments and he issued the following cheques:-

| S.N<br>o. | Amount            | Date       | Bank                                                        |
|-----------|-------------------|------------|-------------------------------------------------------------|
| 1.        | Rs.1,00,000<br>/- | 02.03.2015 | Lakshmi Vilas Bank Ltd.,<br>Pallipalayam Branch, Erode - 6. |



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|    |             |            |                                                             |
|----|-------------|------------|-------------------------------------------------------------|
| 2. | Rs.20,000/- | 06.03.2015 | Lakshmi Vilas Bank Ltd.,<br>Pallipalayam Branch, Erode - 6. |
| 3. | Rs.30,000/- | 09.03.2015 | City Union Bank Ltd.,<br>Pallipalayam Branch, Erode - 6.    |
| 4. | Rs.30,000/- | 11.03.2015 | City Union Bank Ltd.,<br>Pallipalayam Branch, Erode - 6.    |
| 5. | Rs.20,000/- | 14.03.2015 | City Union Bank Ltd.,<br>Pallipalayam Branch, Erode - 6.    |

3. When these cheques were presented for collection on 23.03.2015, they have been returned for the reason 'funds not sufficient'. After issuing statutory notice on 08.04.2015 and after receiving the legal notice dated 11.04.2015, the complainant has filed the private complaint against the accused for the offence committed under Section 138 of N.I. Act. When the accused was questioned, he pleaded innocence and hence, the trial was conducted.

4. On the side of the complainant, one witness was examined was P.W.1 and Exs.P1 to P14 were marked. On the side of the accused, two witnesses were examined as D.W.1 & D.W.2. and one document was marked as Ex.D1.

5. At the conclusion of the trial and on considering the evidence available on records, the learned trial Judge found the accused guilty for the offence under Section 138 of N.I. Act and convicted and sentenced him to undergo Six Months Simple Imprisonment and imposed a fine of Rs.5,000/- in default to undergo One Month Simple Imprisonment. Challenging the same, the accused preferred an appeal before the Principal Sessions Court in CA.No.46 of 2015 and the same was also dismissed on 01.09.2016. Aggrieved over that, the petitioner/accused has filed this present revision case.

6. Heard the learned counsel for the petitioner and learned counsel for the respondent.

7. The learned counsel for the petitioner submitted that the case itself is not maintainable for the reason that five transactions have been clubbed together in one complaint and it is barred under Section 219 Cr.P.C. He has further submitted that the cheque itself was not issued by the petitioner/accused to the complainant; the petitioner/accused borrowed a loan of a sum of Rs.50,000/- from the mother of the respondent and for which he gave a blank cheque as security and that has been later



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misused by the respondent/complainant for the purpose of this case; the learned trial Judge and the First Appellate Judge have not appreciated the evidence in a proper perspective and proceeded to find the accused guilty and hence, the judgment of the Lower Appellate Court should be reversed.

8. The learned counsel for the respondent/complainant submitted that Section 219 Cr.P.C. is not applicable to the proceedings taken under Section 138 of N.I. Act and it will be governed by Section 220 (1) Cr.P.C. Hence, it cannot be said that the complaint itself is illegal. In support of his above contention, the learned counsel cited the decision reported in '2006 (5) CTC 303' in the case of 'Manjula Vs. Colgate Palmolive (India) Limited' and 'IV (2004) BC 346' in the case of 'Suryakant V.Kanakia Vs. V.Muthukumaran'. It is further submitted that the Courts below have appreciated the evidence in a proper perspective by giving initial presumption in favour of the respondent and hence, there is no factual or legal infirmity.

9. Point for consideration :-

Whether the conviction and sentence of the accused for the offence under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate (Fast Track Court) based on the materials available on record is fair and proper?

10. The issuance of the cheque is not disputed. The only contention of the petitioner/accused is that the cheque was not issued by him to the respondent but it was issued as a security for the loan amount availed by him from the mother of the complainant prior to the complaint.

11. On the side of the defence, the mother of the respondent herself was examined as P.W.2 and she has denied about receiving cheques from the accused by advancing a loan of Rs.50,000/- to him. The learned trial Judge has made an observation that the petitioner/accused has not stated the said point while he was questioned under Section 313 Cr.P.C. When the execution of the cheque is not denied, the holder of the cheque will get the benefit of initial presumption under Section 139 r/w 138 of N.I. Act in his favour. The initial presumption has to be drawn to the effect that the cheque has been issued for a legally enforceable debt or liability. However, it is up to the accused to disprove the same by way of giving rebuttal proof.



12. In the case in hand, the petitioner/accused did not dispute his signature on the cheque. Hence, the complainant, who is the holder of the cheque can get the initial presumption under Section 139 of N.I. Act. For the purpose of rebutting the initial presumption, the petitioner/accused had examined himself and the mother of the respondent/complainant. The mother of the complainant was examined as P.W.2 and she stoutly denied about the alleged transaction between herself and the accused. Apart from the above weak evidence, there is nothing available on record to demolish the initial presumption that is granted in favour of the respondent/complainant. Under such circumstances, the initial presumption coupled with the substantive and documentary evidence produced before this Court would become conclusive proof in favour of the respondent/complainant.

13. The loan amount has been given to the petitioner on 25.09.2014. Only towards discharging the said loan, all the five cheques have been given by the petitioner/accused and they have been presented for collection in one and the same date. Despite five cheques have been issued and all the five cheques have been put for collection, the facts remains that all the five cheques arise out of the same transaction. In the earlier judgment of the Division Bench of this Court reported in '2006 (5) CTC 303' in the case of 'Manjula Vs. Colgate Palmolive (India) Limited', it is held that if the cheques have been issued for the same transaction and if they are bounced for wants of funds, the complainant can maintain one complaint for return of all the cheques. The relevant portions of the judgment are extracted as under:-

..... "15. In these circumstances, we hold that Section 219(1), Cr.P.C. permits joinder of all charges provided they are offences of the same kind. We are also of the view that the number of transactions and the cheques issued prior to the issuance of the statutory notice under Section 138(b) of the Act could at best be considered as bundle of facts giving rise to a cause of action and that it is not a ground to quash the criminal proceedings against the drawer of the cheques. We further hold that if the offences are of the same kind, the number of transactions between the parties which culminated into issuance of the statutory notice is no ground to urge that under Section 219, Cr.P.C., the prosecution laid against the petitioner is not maintainable.



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16. In the case on hand, though the act of issuance of 16 cheques was on different dates, in view of the fact that a demand was made by issuing a common notice, the complaint cannot be said to be vitiated. To put it clear, though the giving of cheques by the accused to the complainant may be on different dates, all those acts of giving those cheques were merged together to form the same transaction viz., the presentation of the cheques together was on one particular date. In view of the fact that demand was also made by the complainant on the dishonouring of the cheques by giving one lawyer's notice and not several demands, we are of the view that the accused may be charged and tried at one trial for several such offences because the series of acts are so inter-linked or inter-connected together so as to form the same transaction of dishonouring the cheques, therefore, it cannot be said that the complaint is vitiated."

14. On the same point, in the another judgment of this Court in the case of 'Suryakant V.Kanakia Vs. V.Muthukumaran' reported in 'IV (2004) BC 346', it is clarified that if one see these facts connected together so as to form the same transaction and more than one offences are committed by the same person, he should be charged and tried at one trial for every such offence. The relevant paragraph No.13 is extracted hereunder:-

..... "13. Section 220 (1) of Cr.P.C. states that if one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence. In the present case though the giving of eleven cheques by the accused / petitioner to the complainant / respondent may be on different dates but all those acts of giving these cheques were merged together to form the same transaction viz., the presentation of these cheques together on one particular day as requested by the petitioner / accused herein. In otherwords even though different cheques were given on different dates, the presentation of all these cheques formed the same transaction. Further the Appellant also made the demand on the dishonouring of the cheques by issuing one lawyer's notice (Ex.A.3) and not several demands made for the payment of the dishonoured cheques.



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Held, therefore, that the petitioner / accused herein may be charged and tried at one trial for several such offences because the series of acts are so interlinked or inter-connected together so as to form the same transaction of dishonouring the cheques on a single day. Thus, single complaint lodged is well maintainable in cases where the cheques were issued within a period of one year and where there is single presentation of the cheques and dishonour of the cheques with the same endorsement in or about the same time and issuance of one single notice. In fact, such filing of single complaint prevents multiplicity of proceedings saving the time of the Court. It is advantageous not only to the Complainant but also to the Accused."

15. The position of law on the point of presenting a single complaint for the offence of dishonouring of cheque committed in pursuance of the same transaction, is now well settled. Hence, it cannot be contended that the complaint itself is not maintainable in view of more than three return of cheques have been clubbed together in a single complaint. The Courts below have rightly appreciated the facts and law and in my view, it does not suffer from any factual or legal infirmity so as to warrant my interference.

In the result, this Criminal Revision Case is dismissed and the judgment dated 01.09.2016 of the learned Principal Sessions Judge, Namakkal passed in CA.No.46 of 2015 is confirmed. Connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,  
Namakkal.



2.The Judicial Magistrate (Fast Track Court),  
Tiruchengode.

+1 CC to Mr.A.Sundaravadhanan, Advocate sr 1531.

Cr1.R.C.No.1561 of 2016

NK (CO)

SP (11/02/2022)