IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.718 of 2022

T.Sangeetha ... Petitioner

Vs.

T.Madhavan ... Respondent

Prayer: Criminal Revision Case filed under Section 397 & 401 of Cr.P.C., to call for the records relating to the judgment dated 10.11.2021 made in C.A.No.75 of 2020 on the file of the III Additional District and Sessions Judge, Salem confirming the conviction imposed in the judgment dated 15.12.2020 made in S.T.C.No.52 of 2016 on the file of the learned Judicial Magistrate No.II, Sankari and set aside the same.

For Petitioner : Mr.A.Saravanan
For Respondent : Mr.K.Vasuvenkat

ORDER

This Criminal Revision Case is filed against the judgment dated 10.11.2021 passed in C.A.No.75 of 2020 on the file of the III Additional District and Sessions Judge, Salem confirming the judgment dated 15.12.2020 passed in S.T.C.No.52 of 2016 on the file of the learned Judicial Magistrate No.II, Sankari.

2.Learned counsel for the petitioner would submit that the respondent/complainant has not proved that he lent sum of Rs.15,00,000/- to her on 23.12.2012 and also he has not proved that he had sufficient source of income to lend such huge amount to her. The Trial Court failed to appreciate the fact that the respondent is working in the Transport Department as Superintendent and he is a Government Servant and he submitted income tax return also. The respondent has not proved that on the date of lending money, he was having sufficient source of income. Already, the respondent/complainant has filed another case in S.T.C.No.53 of 2016 on the file of Judicial Magistrate No.II, Sankari, against the petitioner's husband for sum of Rs.30 lakhs and he has not produced any evidence to show that he had source of lending money for a sum of Rs.15 lakhs to the petitioner and Rs.30 lakhs to her husband. The respondent also admitted in his cross examination that he did not produce any document to show that on the date of lending Rs.15 lakhs to the petitioner, he was in possession of such amount and also admitted that he has filed another case in S.T.C.No.53 of 2016 against the petitioner's husband for a sum of Rs.30 lakhs. In this case, in the notice sent by the respondent, he has not stated that he lend Rs.45 lakhs to the petitioner and her husband, but he has stated that Rs.15 lakhs lent to the petitioner. He has admitted that he sent notice separately in their individual name. He has not stated about lending of Rs.45 lakhs to husband and wife, in the notice sent by him to the petitioner. The respondent has not stated in his notice that he lent sum of Rs.30 lakhs to the petitioner's husband for business expenses and debts. He has also admitted that he borrowed sum of Rs.15 lakhs from one Rajagopal and he settled the same. He also admitted in his cross examination in STC.No.53 of 2016 against her husband that he obtained money from one Rajagopal and gave to her husband. That be the case, the respondent has not proved that he was having Rs.15 lakhs on the date of lending money to the petitioner. Presumption under Section 139 of the Negotiable Instruments Act has been rebutted by the petitioner that the respondent has no source of money to lend the money to her. The Trial Court failed to appreciate the evidence and wrongly convicted the petitioner. Challenging the order of the trial court, she had filed appeal in Crl.A.No.75 of 2020 before the III Additional District Court, Salem. Learned Sessions Judge dismissed the appeal and confirmed the order of the Magistrate. Challenging the same, petitioner/accused is before this Court by way of this Criminal Revision Case.

3. It is the case of the respondent/complainant is that the revision petitioner borrowed sum of Rs.15 lakhs from him on 23.12.2012 by issuance of post dated cheque dated 20.01.2013 and when the cheque was presented for collection through his Bank on 03.04.2013, the same was returned as “funds insufficient”on the same date. When the respondent/complainant informed the same to the petitioner over phone, she has given evasive reply. Further, he issued statutory notice. Subsequently, since she has neither repaid the money nor sent a reply, he was constrained to file a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate. The Trial Court after trial, convicted the Revision Petitioner.

4. Heard the learned counsel appearing on either side and perused the materials available on records.

5. The main case putforth by the respondent/complainant is that the petitioner borrowed sum of Rs.15 lakhs and issued a post dated cheque on specific date. The petitioner vehemently disputed the financial capacity of the respondent/complaint and she admitted the signature and denied the liability.

6. It is a well settled proposition of law that the presumption under Section 139 of the Negotiable Instruments Act is a rebuttable presumption. The accused can rebut the presumption in the manner known to law. It is a well settled proposition of law that burden of proof of accused is not that much heavy as that of the complainant and the accused can always rebut the presumption by preponderance of probabilities. Further, the accused need not rebut the presumption by let in direct evidence and if the accused is able to substantiate his defence by preponderance of probabilities, then the presumption deem to be rebutted. In this case, the petitioner has stoutly denied the financial capacity of the respondent and further she has stated that at the relevant of point of time, the respondent/complainant lent Rs.30 lakhs to her husband, but he filed separate case against her husband. In that case, he admitted that he got money from one Rajagopal and gave to her

husband. He repaid the said amount to Rajagopal. Hence, he has filed the case to recover the money from her husband. In the very same period, the respondent has also stated that he lent Rs.15 lakhs to the petitioner for which he has not produced any document to show that he was in possession of Rs.15 lakhs at the relevant point of time.

7. It is admitted that the respondent was working in the Transport Department as Superintendent and he was a public servant. He cannot have any money transaction with stranger without getting permission from the department. But he has stated that he borrowed money from the third party one Mr.Rajagopalan, then he should have obtained permission from the department and he has not filed any such document with regard to the borrowal of money. He has not produced any document either income tax return as on the date of lending money as to he was having source of money or he has not produced any bank statement or any other document to show that he was in a capacity to lend such money. Once the petitioner has questioned the financial capacity, even though signature of the cheque has not been denied, however, it is the duty of the complainant to prove his

source of income and the source of funds which were available in his hand on the date of lending money.

8. This Court finds that even though the petitioner has admitted her signature, but she has explained it under what circumstances, cheque was issued and also the petitioner rebutted the presumption by preponderance of probabilities. During cross examination, the respondent/complainant had admitted various facts but he has not produced any document to show that he was in possession of such huge amount, on the date of lending money. In the absence of any documentary evidence, moreso, he is a Public Servant, he lent such huge amount of Rs.45 lakhs to one family namely husband and wife. Even the said Rajagopal who said to have given the money to the respondent to pay Rs.45 lakhs to one family, and also the respondent repaid the said amount to Rajagopal, he has not produced any document to show the same and not even examined the said Rajagopal. In this case, he has also not produced any document to show that on the date of lending money, he was in possession of such huge amount or source of lending money.

9. Therefore, under these circumstances, this Court finds that the trial court failed to appreciate the defence taken by the petitioner and failed to appreciate that the presumption was rebutted by the petitioner and erroneously held that the petitioner committed offence under Section 138 of Negotiable Instruments Act. The petitioner filed an appeal before the Sessions Court, it is a final court of fact finding, without re-appreciating the entire evidence, simply endorsed the views of the trial court, dismissed the appeal. Though Revisional Court cannot sit in the arm chair of the appellate court and re-appreciate the evidence, however, while exercising its jurisdiction, it can find out as to whether there is any perversity in the appreciation of evidence. On a reading of the material documents, this Court finds that there is a perversity in the appreciation of evidence by the trial court and re-appreciation of evidence by the Appellate Court. On perusing the entire materials, and also the evidence of the respondent and cross examination of the respondent and also other documents and the judgment of both the Courts below, this Court finds that the trial court failed to appreciate the evidence.

10. Therefore, under these circumstances, this Court finds that the revision petitioner has rebutted the statutory presumption under Section 139 of the Negotiable Instruments Act by preponderance of probabilities. Both the Courts below failed to appreciate the same. In view of the above discussion, this Court is inclined to allow this Criminal Revision Case. Accordingly, the Criminal Revision Case is allowed. Judgment dated 10.11.2021 passed in C.A.No.75 of 2020 on the file of the III Additional District and Sessions Judge, Salem confirming the judgment dated 15.12.2020 passed in S.T.C.No.52 of 2016 on the file of the learned Judicial Magistrate No.II, Sankari is set aside. Fine amount if any paid, is ordered to be refunded.

16.11.2022
(1/2)

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Index:yes/No
Internet:yes/No

P.VELMURUGAN, J.

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To

1. The III Additional District and Sessions Judge,
   III Additional District and Sessions Court,
   Salem.

2. The Judicial Magistrate No.II,
   Judicial Magistrate No.II Court,
   Sankari.

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