IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case Nos.438 and 441 of 2019
and Crl.M.P.No.6605 of 2019

R.Murugesan ... Petitioner in Both Crl.RCs.

Vs.

S.Karthikeyan ... Respondent in Both Crl.RCs.

Prayer in Crl.R.C.No.438 of 2019 : Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and to allow the Criminal revision by set aside the judgment dated 23.10.2018 passed by the II Additional District and Sessions Judge, Salem, in C.A.No.104 of 2017 by the II Additional District and Sessions Judge, Salem, confirming the conviction and the sentence imposed on the petitioner in STC No.608 of 2016, on the file of the Judicial Magistrate, No.III, Salem, by the judgment dated 24.07.2017 and set aside the order for payment of compensation of Rs.10/- lakhs under Section 357 (3) of Cr.P.C.

Prayer in Crl.R.C.No.441 of 2019: Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and to allow the criminal revision by set aside the judgment dated 23.10.2018 passed by the learned II Additional District and Sessions Judge, Salem C.R.P.No.35 of 2017, confirming the conviction and the sentence imposed on the petitioner in STC No.608 of 2016, on the file of the Judicial Magistrate No.III, Salem, by the Judgment dated 24.07.2017 and to set aside the order for payment of compensation of Rs.10 lakhs u/s 357(3) of Cr.P.C.

In both Crl.R.Cs.

For Petitioner	:	Mr.S.Balasubramanian for Mr.G.Dhanasekaran Legal Aid Counsel
For Respondent	:	Mr.N.Manojkumar for M/s.K.V.Lawfirm

ORDER

These Criminal Revision Cases have been filed seeking to set aside the judgment dated 23.10.2018 passed by the II Additional District and Sessions Judge, Salem, in C.A.No.104 of 2017 and C.R.P.No.35 of 2017, confirming the conviction and the sentence imposed on the petitioner in STC No.608 of 2016, on the file of the Judicial Magistrate, No.III, Salem, by the judgment dated 24.07.2017, and set aside the order for payment of compensation of Rs.10 lakhs under Section 357 (3) of Cr.P.C.

2. The petitioner is the accused and the respondent is the complainant in both the revision petitions.

3. The case of respondent is that the petitioner had borrowed Rs.3 lakhs on 10.01.2014, another Rs.3 lakhs on 10.06.2014 and Rs.4 lakhs on 10.10.2014 from the respondent for his family and business expenses agreeing to repay the same with interest @ 12% per annum and in order to discharge the said debt, the petitioner had executed a promissory note in favour of the respondent on 10.10.2014 and he paid interest till

10.12.2014 and further, the petitioner had issued a cheque dated 10.12.2014 bearing No.853094 for Rs.10 lakhs drawn at State Bank of India, Salem-8. Thereafter, as per the instruction of the petitioner, the respondent presented the said cheque with his banker for encashment but the same was dishonoured for "insufficient funds" on 12.12.2014. Hence, the complainant issued a legal notice to the petitioner demanding the said amount within 15 days. But the petitioner deliberately returned the notice and failed to make payment. Therefore, the respondent had filed a private complaint against the petitioner under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate No.III, Salem, and the learned Magistrate taken cognizance of the complaint in STC No.608 of 2016, and after enquiry, convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo 1 month simple imprisonment by order dated 24.07.2017.

4. Challenging the said Judgment of conviction and sentence, the petitioner herein had filed an appeal before the II Additional District Judge, Salem, and the same was taken on file in C.A.No.104 of 2017.

5. Subsequently, the respondent also filed a Criminal Revision Petition before the II Additional District Judge, Salem, for enhancement of the said fine amount imposed by the learned Judicial Magistrate No.III, Salem, in STC No.608 of 2016 by order dated 24.07.2017, and the same was taken on file in C.R.P.No.35 of 2017.

6. The learned II Additional District Judge, Salem, after hearing the arguments and re-appreciating the entire materials, dismissed the appeal filed by the petitioner in C.A.No.104 of 2017 by Judgment dated 23.08.2018 and confirmed the conviction and sentence passed by the learned Magistrate. At the same time, allowed the Criminal Revision Petition filed by respondent by Judgment dated 23.08.2018 and directed the accused to pay compensation of Rs.10 lakhs to the respondent instead

of the fine amount of Rs.5,000/- imposed by the Judicial Magistrate.

7. Now, challenging the said Judgments in the Appeal as well as in the Revision, the petitioner/accused has filed the present revisions before this Court.

8. The learned counsel for the petitioner would submit that though the respondent has stated that he had given a sum of Rs.10 lakhs to the petitioner, he has admitted that he has not obtained any document from the petitioner on the date of giving the said amount to the petitioner. He would submit that no prudent man would lend such a huge amount of Rs.10 lakhs, without obtaining any document which itself creates a reasonable doubt. Further, he would submit that though the respondent in his complaint has stated that till 10.12.2014, he received interest from the petitioner @ 12 % per annum, however, there is no record to show that the petitioner had paid interest to the respondent till 10.12.2014. Even though the respondent is a money lender and income tax assessee, he has admitted that he has not shown in the income tax returns regarding the

amount lent to the petitioner. The respondent has not proved that on the particular date when the respondent alleges to have given money to the petitioner, he was having the capacity to lend the money to the petitioner and that the alleged cheque was issued to discharge the legally enforceable debt. In this case, the respondent has not filed any bank statement or accounts to show that on the date of giving money to the revision petitioner, he was having money or financial source to lend the money. Further, the respondent has admitted that he has not shown the said amount in the Income Tax Returns. Therefore the respondent has not proved that on the date when the cheques are alleged to have been received from the petitioner, he was having sufficient funds either on hand or in his bank account and that both the Courts below failed to appreciate both the oral and documentary evidence and wrongly convicted the petitioner. Therefore, the conviction and sentence of imprisonment imposed by both the Courts below are liable to be set aside and the revision petitions are to be allowed.

9. The learned counsel for the respondent would submit that even though the petitioner denies the financial capacity of the respondent, but the petitioner himself has put a suggestion before the P.W.1 that the respondent lent money to several persons and also filed several criminal complaints under Section 138 Negotiable Instruments Act in various Courts. Therefore, the financial capacity of the respondent cannot be questioned. Further, the non showing transaction between the petitioner and respondent in the Income Tax, is not a fatal to the respondent's complaint. The Hon'ble Supreme Court in its decision has reiterated that even though the complainant has not filed any Income Tax Returns or not shown any money transaction in the Income Tax Returns, that may not be a ground to the accused to get acquittal. The petitioner has admitted the signature and the Courts below rightly appreciated the evidence and there is no perversity in the orders passed by the Courts below. Therefore, the revision petitions are liable to be dismissed.

10. Head both the counsel and perused the materials on record.

11. The admitted fact is that the petitioner is the borrower and the respondent is the money lender. The Signature found in the cheque is admitted and the execution of cheque is also admitted. The only defence taken by the revision petitioner is that he has signed the cheque for security purpose for the borrowal of a 3rd party from the respondent. Subsequently, the respondent has made use of the cheque given by the petitioner for security purpose as a guarantor and filed the criminal complaint against the petitioner. Though the petitioner has taken such a stand, he has not given any specific details on whose name the borrowal was made and for whom he had given the cheque as guarantor. It is settled proposition of law that the accused need not come into the witness box and let any direct evidence, he can always prove his defence through preponderance of probabilities in the manner known to law. When the complainant substantiated his complaint by producing documents, the Court can accept his explanation unless the contrary is proved. Once the signature found on the cheque and execution are admitted, then presumption under Section 139 of Negotiable Instruments Act would

come into play and the onus of proof will automatically shifts on the accused and it is for the accused to rebut the presumption in the manner known to law. Whereas in this case, both the execution and signature are admitted, but the accused has not rebutted the presumption in the manner known to law. Though he has taken several defence, he has not substantiated his defence. Admittedly, the accused need not prove his defence by direct evidence and he can substantiate his defence by cogent evident whereas, in this case, as already stated, it is a case of revision against the findings of two Courts below. It is settled proposition of law that while interfering with the revision, the revision Court has to find out whether there is any perversity in appreciation of evidence or illegality or infirmity in the order passed by the Courts below. When there is no perversity in the appreciation of evidence and when there is no infirmity or illegality in the order of the Courts below, the revision Court normally would not interfere with the orders of the Courts below. However, in this case, as already stated, the execution and signature are admitted. Therefore, there is statutory presumption under Section 139 of Negotiable

Instruments Act that the cheque was issued to discharge the legally enforcible debt. Once the Court draws the presumption, it is for the accused to rebut the presumption in the manner known to law. On a reading of the entire materials, this Court does not find any perversity, illegality or infirmity in the orders passed by the Courts below and there is no ground to interfere with the orders of the Courts below.

12. Further, the respondent himself has admitted that he is a money lender and the petitioner had borowed a sum of Rs.10 lakhs from him. Further, during the cross examination, the respondent has admitted that he has not shown the said transaction in the Income Tax Returns. Hence, this Court is of the view that the respondent is a tax evader and this Court directs the Registry to send the copy of the depositions and the complaint filed by the respondent to the Income Tax Department. The Income Tax Department is directed to verify the returns submitted by the respondent during the relevant assessment year. If it is found that the respondent had not declared this amount in the Income Tax Returns, the

Income Tax Department is directed to take stringent action against the respondent in the manner known to law after adopting Procedure as contemplated in the Income Tax Act.

13. With the above directions, these Criminal Revision Cases are dismissed.

05.09.2022

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To

1. II Additional District and Sessions Judge, Salem

2. The Judicial Magistrate, No.III, Salem,

Copy to

The Income Tax Office
Aayakar Bhawan
No.121, M.G.Road
Nungambakkam
Chennai - 34
Phone No.28338383

P.VELMURUGAN, J.

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