BAIL SLIP

The Appellant/Accused Namely, C.Rajasekaran S/o.Chinnasamy aged 58 Years was directed to be released on bail by the order of this court dated 12.06.2019 and made in Crl.MP.No.7309/2019 in Crl.R.C.No.537 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2021
PRONOUNCED ON : 31.01.2022

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.537 of 2019
and
Crl.M.P.Nos.7309 to 7311 of 2019 and 9402 of 2021

C.Rajasekaran ...Petitioner

Vs.

1.S.Padmavathi ...Respondent

2.The State represented by
The Public Prosecutor,
Coimbatore. ... Respondent

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C., to set aside the conviction imposed in the judgment 02.04.2019 made in C.A.No.139 of 2017 on the file of the V Additional District Sessions Judge, Coimbatore, confirming the judgment dated 01.06.2017 made in C.C.No.71 of 2015 on the file of the Judicial Magistrate Fast Track Court No.I, Magistrate Level, Coimbatore.

For Petitioner : Mr.N.Manokaran
for Mr.N.Ponraj
For R1 : Mr.S.M.Muralidharan
For R2 : Mr.S.sugendran
Government Advocate (Crl.side)

O R D E R

This Criminal Revision Case is filed to set aside the conviction imposed in the judgment 02.04.2019 made in C.A.No.139 of 2017 on the file of the learned V Additional District Sessions Judge, Coimbatore, by confirming the judgment dated 01.06.2017 made in C.C.No.71 of 2015 on the file of the learned Judicial Magistrate Fast Track Court No.I, Magistrate Level, Coimbatore.

2.The petitioner herein is the accused. The first respondent is the complainant.

3.The respondent filed a complaint against the petitioner/accused for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred as "N.I Act" in short) before the learned Judicial Magistrate (Fast Track Court No.I), at Magistrate Level, Coimbatore. The learned Magistrate has taken the cognizance of complaint on file in C.C.No.71 of 2015 and after hearing the arguments, held that the petitioner/accused was found guilty for the offence under Section 138 of the N.I Act and convicted and sentenced to undergo six months Simple Imprisonment and pay a sum of Rs.5,00,000/- as compensation, within two months from the date of the judgment, in default, to undergo simple imprisonment for further period of two months. Challenging the said judgment of conviction and sentence, the petitioner/accused filed an appeal before the Principal District and Sessions Judge, Coimbatore and taken the appeal on file in Crl.A.No.139 of 2019 and made over to the V Additional District and Sessions Judge, Coimbatore, for disposal. The learned Additional Sessions Judge, after hearing the arguments advanced on either side and considering the materials, dismissed the appeal. Challenging the said judgment of dismissal of the appeal, the petitioner/accused has filed the present criminal revision case before this Court.

4.The learned counsel appearing for the petitioner/accused would submit that the petitioner/accused borrowed a sum of Rs.5 lakhs from the first respondent/complainant on 10.02.2011 and also agreed to repay the said amount within 3 years. Later, the petitioner/accused repaid the said amount and after discharging the liability, the first respondent/complainant has not returned the security documents, which are said to have been executed by the petitioner/accused in favour of the first respondent on the date of borrowal ie.,on 10.02.2011. The cheque bearing No.755856, dated 25.08.2014, which is said to have executed by the petitioner/accused in favour of the first respondent/complainant, is barred by limitation. Though the respondent has stated that the petitioner/accused borrowed a sum of Rs.5 lakhs from the first respondent/complainant and executed a promissory note on 10.02.2011 and since the petitioner did not repay the money, he executed the disputed cheque dated 25.08.2014, after the period of 3 years from the date of borrowal and therefore, the disputed cheque was not issued for legally enforceable debt. Therefore, any cheque issued for time barred debt, which is not legally enforceable. When the execution of cheque is admitted, the presumption that the cheque is issued only for discharging legally enforceable debt or liability. The presumption under Section 139 of N.I Act, it can always be rebutted by the petitioner/accused on preponderance of probability. Therefore, the trial Court failed to appreciate the defence taken by the revision petitioner/accused and wrongly convicted him. When the petitioner/accused approached the appellate Court, the appellate Court failed to re-appreciate the legal prepositions and wrongly dismissed the appeal. Therefore, the judgment of the Courts below are liable to be set aside and the petitioner/accused has to be acquitted.

5.The learned counsel appearing for the first respondent/complainant would submit that the petitioner/accused admitted the borrowal of money and also admitted the issuance of cheque, on 25.08.2014. Even though the signature and the execution of cheques are admitted, still the accused can rebut the presumption by preponderance of probability. Though the petitioner has raised several grounds in the appeal, in which, mainly two grounds have been taken. One ground is plea of discharging and the another one is the issuance of cheque is not for discharging legally enforceable debt. As far as the discharge is concerned, the petitioner/accused has not produced any document to show that he discharged the amount borrowed from the first respondent/complainant and there is no oral and documentary evidence to substantiate his defence. As far as legally enforceable debt is concerned, the petitioner himself has not denied the execution of cheque. Though the cheque was issued after three years from the date of borrowal, it does not mean the cheque issued not for legally enforceable debt. Once the petitioner/accused executed a cheque and agreed to repay the money and subsequently if he does not keep up his words and when the cheque was presented for collection within the statutory period, if the cheque is not honoured and after receiving notice the petitioner/accused has not repaid the money, he has committed the offence under Section 138 of N.I Act. The cheque was issued only to discharge for legally enforceable debt, but not otherwise. Therefore, the trial Court as well as the appellate Court rightly rejected the contention of the petitioner/accused and therefore, there is no merit in the revision and the same is liable to be dismissed.

6.Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.S.M.Muralidharan, learned counsel appearing for the first respondent and Mr.S.Sugendran, learned Government Advocate(Crl.side) appearing for the second respondent and perused the materials placed before this Court.

7.The case of the first respondent/complaint is that the petitioner borrowed a sum of Rs.5 lakhs, on 10.02.2011 from the first respondent/complainant and on the same day, the petitioner/accused has executed a promissory note in favour of the first respondent/complainant and he also agreed to repay the said amount within a period of three years. Inspite of repeated request, the petitioner did not repay the money. Subsequently, the petitioner/accused executed a cheque bearing No.755856 for a sum of Rs.5 lakhs, on 25.08.2014. Subsequently, the first respondent/complainant presented the cheque in the bank viz., Dena Bank, Siddhapudur Branch, Coimbatore, on 01.09.2014 and the same was returned as unpaid for the reason's 'Account Blocked' and the same was returned to the first respondent/complainant by the Bank, by memo dated 01.09.2014. Therefore, the first respondent/complainant issued a legal notice to the petitioner/accused on 03.09.2014. The petitioner/accused received the same on 09.09.2014 and he also sent a reply notice on 09.09.2014. But, the petitioner/accused has not paid any amount. Therefore, the first respondent/complainant has filed the private complaint before the learned Judicial Magistrate, (Fast Track Court No.I) Magistrate Level, Coimbatore. The learned Magistrate, after hearing the arguments, found the guilt of the petitioner/accused and convicted and sentenced him as stated above.

8.On a perusal of the records, it is seen that the borrowal of money is not in dispute and the execution of cheque is also not in dispute. The only contention raised by the petitioner/accused is that though he repaid the said money, the first respondent/complainant did not produce the promissory note. Further, the petitioner/accused borrowed the money only on 10.02.2011 even assuming that he has not repaid the said money, the first respondent/complainant would have recovered the money within three years from the date of execution of promissory note. The disputed cheque said to have been executed on 25.08.2014, which is beyond the period of three years. since the claim of the first respondent is barred by limitation, the cheque was not issued for legally enforceable debt.

9.It is admitted that the petitioner/accused borrowed a sum of Rs.5 lakhs from the first respondent/complainant, on 10.02.2011. Though the petitioner has taken the defence of discharge and he has not proved that he repaid the money either he produced any discharge receipt or any other document or any other witnesses were examined to prove that the amount borrowed from the respondent was subsequently, repaid. Therefore, once the repayment was not proved by the petitioner/accused, when the petitioner is liable to pay the borrowal amount of Rs.5 lakhs. Now, according to the respondent, the petitioner/accused did not repay the money. When the first respondent/complainant demanded to repay the same, for which, the petitioner has issued a cheque bearing No.755856, dated 25.08.2014 and when it was presented for collection, the same was returned as unpaid. Therefore, the first respondent/complainant has issued a statutory notice, after issuance of notice, the petitioner/accused simply sent a reply, but he did not repay the money.

10.According to the petitioner, the cheque is said to have been issued by him, beyond the period of three years from the date of borrowal of money. Therefore, it is time barred debt and any cheque issued for discharging time barred debt, is not legally enforceable debt. Even though the signature and the execution of cheques are admitted, still the accused can rebut the presumption by preponderance of probability. No doubt, it is a rebuttable presumption and the petitioner/accused has not proved that the cheque was not issued to discharge the debt and the only contention is that since the cheque is issued after the period of three years from the date of borrowal, it is time barred. Therefore, the cheque was issued after three years is not for discharging legally enforceable debt. No doubt, if the borrowal amount has not been paid within three years, the first respondent/complainant has to file a suit within three years to recover the said money, if it is not filed within three years, it is time barred. Unless, the acknowledgment made by the debtor within three years from the date of borrowal, if beyond the period of three years from the borrowal, if a fresh promise made by the borrower than the creditor can enforce the same. In this case, admittedly, the petitioner borrowed a sum of Rs.5 lakhs on 10.02.2011 and though the petitioner/accused executed a promissory note, the first respondent/complainant proved that he has not repaid money. However, on denying that payment, the petitioner issued a cheque on 25.08.2014. The petitioner knows that if the amount borrowed that has to be recovered within three years, the first respondent/complainant either has to file suit or any other legal proceedings for recovery of money. Unless the creditor proved that there was a fresh promise made by the debtor the time barred debt cannot be recovered. Therefore, the cheque is not issued to discharge the legally enforceable debt. Therefore, both the trial Court as well as the appellate Court had failed to consider legal position and wrongly convicted the petitioner/accused.

11.It is well settled proposition of law that the scope of revision is very limited. Unless, the revision Court finds that there is perversity in appreciation of evidence by both the Courts below, the Revision Court cannot sit in the aim chair of the Appellate Court and re-appreciate the entire evidence. However, in this case, both the Courts below have failed to appreciate provision of law. Because, the cheque in question was issued only in respect of time barred debt. Under the said circumstances, it cannot be said that the accused have committed offence under Section 138 of N.I Act.

12.Since this Court finds that on the date of issuing the cheque the debt is already time barred and there is no fresh promise made. The complaint has not proved that the accused made a fresh promise to repay the time barred debt and issued the disputed cheque. Therefore, this Court finds that there is a perversity in finding of both the Courts below. Hence, the judgment of the both the Courts below are liable to be set aside. Accordingly, set aside.

13.In the result, this Criminal Revision Case is allowed and the judgments of the Courts below are set aside and the petitioner is acquitted and fine amount or compensation amount if already paid, the same shall be ordered to be refunded. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Ns

To

1.The V Additional District Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
Fast Track Court No.I,
Magistrate Level,
Coimbatore.

3. Do through the Chief Judicial Magistrate, Coimbatore.

4.The Public Prosecutor,
Madras High Court,Madras.

5. The Public Prosecutor, Coimbatore

Copy to:
The Section Officer,
Criminal Section,
High Court,Madras.

+1 cc to Mr.S.M.Muralidharan, Advocate Sr.NO. 6249

Crl.R.C.No.537 of 2019
and
Crl.M.P.Nos.7309 to 7311 of 2019 and 9402 of 2021

gpl(CO)
A.SK(24/03/2022)