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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.01.2022

Pronounced on : 25.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.274 of 2014

Ms.Rajalakshmi

... Petitioner/Accused

Versus

Sri.P. Doss (Died)

1. Ms. Sheeba

D/o. P. Doss

2. Ms. Niruba

D/o P. Doss

3. Mr. D. Jabasteen

S/o.P. Doss

4. Mr. D. Raja

S/o.P. Doss

(2 to 5 having address at

Door No. 4/344, Sampangi Street,

Poonga Nagar, Kakkalur village

Thiruvallur - 602 001)

(R1 to R4 impleaded as per order

in Crl.RC.No.274/2014 dated 23.12.2021)

... Respondents/Complainants

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in C.A.No.74 of 2012, dated 20.01.2014, on the file of the V-Additional Sessions, Judge, Chennai, and confirming the Order/Judgment passed in C.C.No.1308 of 2006, dated 29.03.2012 on the file of the Learned II Metropolitan Magistrate, Egmore, Chennai, and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.M.Balaji

For Respondent : Mr. C. Ruban D. Silva

ORDER

This Criminal Revision is filed by the petitioner by name Rajalakshmi, aggrieved by the conviction for the offence under



Section 138 of the Negotiable Instruments Act 1881, by the Judgement dated 29.03.2012 of the Learned II-Metropolitan Magistrate, Egmore in C.C.No.1308 of 2012 and imposing a sentence of six months Simple Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo two months Simple Imprisonment and the Judgment of the Learned V- Additional Sessions Judge, Chennai in CrI.A.No.74 of 2012, dated 20.01.2014, thereby, dismissing the appeal and confirming the conviction and sentence passed by the Trial Court.

2.This is a case arising by way of a private complaint filed under Section 200 of the Negotiable Instruments Act. The case of the complainant is that the accused befriended the complainant and obtained the loan on different dates in all totaling a sum of Rs.5 Lakhs and issued a letter of undertaking on 27.07.2004 confirming the borrowal and issued a cheque dated 25.08.2004 for a sum of Rs.5 Lakhs, which was presented to the Indian Bank, Harbour Branch on 28.08.2004, the same was returned with an endorsement "Funds insufficient". The complainant issued a statutory notice on 26.09.2004, and the accused received the said notice on 28.08.2004, but, he did not make any payment within the statutory time or thereafter, hence, the complaint.

3.The case was taken on file in C.C.No.1308 of 2006 and the sworn statement was recorded on 15.06.2006 and having taken cognizance of the case for the offence under Section 138 of the Negotiable Instruments Act, issued summons to the accused. Upon being furnished the copies under Section 207 of Cr.P.C., the petitioner/accused denied the charge and stood trial.

4.On behalf of the complainant, the complainant examined himself as PW.1. The undertaking letter dated 25.07.2004, was marked as Ex.P-1 and the cheque dated 25.08.2004, was marked as Ex.P-2. The return memo was marked as Ex.P-3. The copy of the legal notice was marked as Ex.P-4 and the acknowledgment card was marked as Ex.P-5.

5.By way of cross-examination, the salary statement of the complainant was marked as Ex.D-1, the earlier notice was marked as Ex.D-2 and the reply notice as Ex.D-3 on behalf of the accused. Upon being questioned about the evidence on record and the incriminating circumstances under Section 313 of Cr.P.C., the accused denied the same. Thereafter, no evidence was let in on behalf of the accused.

6.The Trial Court proceeded to hear the learned counsel appearing for the complainant and the learned counsel for the



accused and by Judgment dated 29.03.2012, found that the complainant has proved the presentation of cheque & return and issuance of statutory notice. The Trial Court found that even though in the cross-examination on behalf of the accused, Ex's.D-1 to D-3 were marked, that by itself would not amount to rebutting the case of the prosecution. Once the signature in the cheque is admitted, by virtue of Section 118 r/w Section 139 of the Negotiable Instruments Act, the presumption has arisen in favour of the complainant and therefore, the contention raised on behalf of the accused does not command acceptance. The live-in relationship between the accused and the complainant cannot by itself explain the custody of the cheque - Ex.P-2 with the complainant. Therefore, the Trial Court came to the conclusion that the presumption remains unrebutted and convicted the petitioner/accused and sentenced as aforementioned.

7. Aggrieved by the said Judgment, the petitioner/accused preferred an appeal in CrI.A.No.74 of 2012, on the file of the Learned V-Additional Sessions Judge, and by Judgment dated 20.01.2014, the Learned Sessions Judge found that from the evidence of P.W.1 it is revealed that Ex.P-2 has been issued and Ex.P-1 undertaking letter has been given, therefore, the presumption under Section 118 of the Negotiable Instruments Act, has arisen. In the absence of any witness being examined by the accused, it cannot be held that presumption has been rebutted. The Appellate Court, even though found there was inconsistency in the statutory notice as well as Ex.D-2 notice, it found that the appellant agreed to pay the sum of Rs.5 Lakhs, after negotiations by friends. Therefore, it rejected the appeal and confirmed the sentence. Aggrieved by the same, the present revision is filed before this Court. Pending the revision, the respondent complainant passed away on 27.02.2021 and this Court after getting particulars, suo moto impleaded Respondents 2 to 5, as his legal heirs.

8. Heard Mr. K.M. Balaji, the learned counsel for the petitioner and Mr. C. Ruban D. Silva for the legal heirs of the complainant.

9. Mr. K.M. Balaji, the Learned Counsel for petitioner would submit that this is a case, where the complainant has suppressed the relationship and filed a false complainant. There is suppression of material facts as to the earlier notice and reply notice. When the complainant and the accused were in a domestic relationship, the complainant cannot take advantage of the position of trust and bounce the cheque and file the present case. It is for the complainant to prove the debt that has not



been done. The accused has let in evidence to rebut the presumption.

10.Mr.C.Ruban D. Silva, the Learned Counsel for the legal heirs of the complainants would submit that the letter of undertaking has not been denied by the accused. The signature in the cheque has not been denied by the accused. Therefore, the legal liability to issue the cheque stood proved. The mere cross examination on the basis of the earlier legal notice and reply notice will not in any manner rebut the presumption. In any event, the complainant has explained the controversy by stating that earlier it was four lakhs but in view of subsequent borrowal and in a panchayat held before common friends the accused had finally agreed to pay a sum of Rs. 5 lakhs and she executed the letter of undertaking as well issued the cheque and therefore, the Trial Court and the First Appellate Court, rightly convicted the accused and he prayed for dismissal of the revision. It is his submission that his client was also acquitted even in the connected complaint lodged by the petitioner /accused. The complainant has also denied about the live-in relationship.

11.I have considered the rival submissions made on behalf of either side and perused the records. In this case, the complainant is said to be an employee of the Chennai Port Trust, and estranged from his family and he was in a live-in relationship with the petitioner/accused. In his cross-examination, the complainant has admitted this fact as follows:-

" நான் எதிரியுடன் சேர்ந்து வாழ்ந்தேன் என்றால், சரி "

in this background, Ex.P-4/Statutory notice, it was mentioned as follows:-

" My client states that you befriended him and obtained a Loan amount on different dates together totaling Rs.5,00,000/- (Rupees five lakhs only) from him and executed bond Notes in favour of my client agreeing to repay the said amount with interest.... "

12.It was denied by the petitioner/accused by her reply notice. The complainant has accepted the receipt of the said notice in his cross-examination. Earlier PW.1 has also issued another legal notice, which is marked as Ex.D-2, the same was also accepted by him in the cross-examination. In the said notice, it was mentioned as follows:-

" My client states that you represented to my client that you are working as Ayah at the Mid-day Meals Centre, having the place at No.51,



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Manikanda Mudali Street, Washermanpet, Chennai - 81 on a monthly salary of Rs.1000/-. Further you had requested my client to lend some amount to meet your urgent family needs and requested my client to lend a total sum of Rs.4 Lakhs to you which, you promised to return back to my client within a short period with nominal interest and further agreed to pay the interest at the rate of 24% per annum. "

13.The learned counsel for the petitioner, pointing out the above, submitted that there are material contradictions about the amount of loan advanced which was earlier mentioned as Rs.4 Lakhs. Secondly, it is mentioned in the said notice that the petitioner had borrowed the money for family needs. When both the petitioner and the complainant were living together, it is strange that the complainant would say that she borrowed money for family needs. This apart, the statement of the petitioner feigning ignorance of the petitioner as if she was working as "Ayah" in the mid-day Noon Meal Centre for a salary of Rs.1,000/-, which would show that the complainant cannot be believed. The issuance of the earlier notice and also the reply notice has been suppressed in the complaint. The relationship between the petitioner and the complainant was also suppressed in the complaint. When PW.1 has been cross-examined about the same, he had admitted these facts. The Trial Court and the Lower Appellate Court, even though held that there are contradictions, however, rejected the defence on the grounds (i) that there was no witness examined on behalf of the defence; (ii) presuming that subsequently the petitioner would have agreed to pay Rs. 5 Lakhs.

14.In this regard, the Judgment of the Hon'ble Supreme Court of India, relied upon by the learned counsel for the petitioner in Basalingappa Vs. Mudibasappa¹, which dealt with the nature of the presumption, and the burden of the accused to rebut the presumption. After elaborately considering all the earlier Judgments, the Hon'ble Supreme Court of India, summarized the law in paragraph No.23, as follows:-

"23.We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a

1 (2019) 5 SCC 418 : (2019) 2 SCC (cri) 571 : (2019) SCC online Sc 491



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presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under [Section 139](#) is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, [Section 139](#) imposed an evidentiary burden and not a persuasive burden." (emphasis supplied)

15. Therefore, the approach of the Trial Court that there was no direct evidence let in on behalf of the accused is incorrect in law. Rebuttal evidence can be by way of cross examination and marking of documents through cross examination also. The approach of the Appellate Court that oral evidence of PW.1 would not overcome the inconsistency in the documentary evidence of Ex's.P-4, D-1 to D-3 are unacceptable in law. Therefore, the findings of the Trial Court as well as the Appellate Court are based on the reasonings, which cannot be accepted in law. Thus, incorrect findings leading to failure of Justice to the petitioner/accused, is an occasion which commands this Court to interfere in the exercise of revisional jurisdiction. Accordingly, the finding of the guilt of the Trial Court as well as the Appellate Court is liable to be interfered with.

16. The Criminal Revision Case is allowed :

(i) The Judgment dated 29.03.2012 in C.C.No.1308 of 2006 of the Learned II Metropolitan Magistrate, Egmore, Chennai, and Judgment dated 20.01.2014 in CrI.A.No.74 of 2012 of the V-Additional Sessions, Judge, Chennai, are set aside;

(ii) The accused is acquitted granting the benefit of doubt;



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(iii) The fine amount, if any, paid by the accused is ordered to be refunded to her.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

klr

To

1.The V- Additional Sessions Judge,
Chennai.

2.The II Metropolitan Magistrate,
Egmore, Chennai.

+lcc to Mr.Balaji, Advocate SR.No.4495

Cr1.R.C.No.274 of 2014

MG (CO)
GN (04/03/2022)