IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.02.2022

Pronounced on : 29.04.2022

CORAM : JUSTICE N.SESHASAYEE

Criminal Revision Case No.735 of 2019

Raghu ... Petitioner/Accused

Versus

N.M.Ramachandran ... Respondent/ Complainant

Prayer : Criminal Revision filed under Sections 397 r/w 401 of Criminal Procedure Code, against the Judgement of the learned Additional District Judge (FTC) Vellore, Vellore District dated 30.01.2019 by reversing the Acquiting Judgment of learned Judicial Magistrate(FTC), Vellore, Vellore District in C.C.No.53 of 2016 dated 06.03.2018.

For Petitioner : Mr.G.Vinodh Kumar
For Respondent : Mr.D.P.Paulsudesh

O R D E R

The accused in S.C.No.53 of 2016 on the file of the Judicial Magistrate (FTC) Vellore is the revision petitioner herein. The Court Vide its judgment dated 06.03.2018 acquitted the accused on a private complaint filed by the respondent for an offence under Section 138 of the NI Act. This came to be reversed in C.A.No.65 of 2018 preferred by the respondent herein. Hence, this revision.

2.The material facts in the complaint runs as follows;

- On 17.12.2014, the complainant/respondent advanced a loan of Rs.9,00,000/- to the revision petitioner/accused on a promissory note executed on the same date. This promissory note is marked as Ext.P.1. Later, on 28.12.2015, the revision petitioner issued Ext.P.2, cheque for a sum of Rs.10,14,500/-, which comprises of the principal plus the interest. This cheque when presented was dishonoured, and Ext.P.3 is the dishonourment memo. Promptly, the respondent issued a statutory notice under Section 138 of the N.I Act on 08.01.2016, a copy of which is marked as Ext.P.4. The acknowledgement is marked as Ext.P.5. There was no reply, and the complaint was promptly laid.

- During trial, the respondent examined himself as P.W1 and also examined another witness as P.W.2. He marked Ext.P.1 to P.5 and then marked Ext.P.6, which is his bank statement.
- For the respondent, he examined 2 independent witnesses namely D.W.1, an Income Tax Officer, and another witness as D.W.2. He however, did not examine himself as a witness. On appreciation of evidence before it, the trial Court acquitted the accused.

3.Before explaining the line of reasoning of the learned Magistrate, certain evidentiary facts may be stated :

- While in his complaint, P.W.1/complainant makes a categorical statement that he had advanced Rs.9,00,000/- on 17.12.2014, in his cross-examination, he has stated that this amount was advanced in instalments.
- Secondly, to corroborate the loan transaction, P.W.1 has produced Ext.P.6, bank statement, and he also has admitted in his cross-examination that when the revision petitioner requested for a loan, he did not have the money with him, that he withdrew the money from the bank to pay to the revision petitioner. The learned Magistrate would now compare Ext.P.6, the bank statement of P.W.1, wherein he finds that there are no withdrawals matching Rs.9,00,000/- on 17.12.2014.
- Thirdly, in Ext.D.2, the Income Tax Returns of the complainant for the assessment year 2015-2016 pertaining to the previous year 2014-2015, during which period the loan transaction was alleged to have been made, but there was no disclosure of loan transaction alleged in the complaint herein.

It is in these circumstances, the trial Court disbelieved the version of the complainant and chose to acquit the revision petitioner.

4.The matter went to the appellate Court. The appellate Court relied on three facts:

a) That the revision petitioner has not disputed the signature in Ext.P.1, promissory note, or in Ext.P.2, cheque issued by him, and that he has not issued a reply notice.

b) According to the first Appellate Court, these essentially are the fundamental ingredients required to be established for invoking the presumption of Section 139 of the NI Act, and since the revision petitioner has not entered the box to rebut it or to deny Ext.P1 or Ext.P.2, he is bound by them and held him guilty.

5. The learned counsel for the revision petitioner argued that, in his endeavour to rebut the presumption under Section 139 of the N.I Act, it is not necessary for the revision

petitioner to enter the witness box, that he can make use of internal inconsistencies or contradictions in the evidence of the complainant. This precisely is what the accused has attempted, and therefore, the appellate Court has gone wrong in requiring that the accused should step in the witness box. He then relied on the same set of circumstances, or rather the line of reasoning of the learned Magistrate to support the case.

6. Per contra, the argument of the learned counsel for the respondent/complainant is along the same line of reasoning of the appellate Court.

7. The learned Sessions Judge appeared to have over simplified the issue. A mere proof of signature in the cheque only implies that the cheque was drawn by the accused, which immediately invite an application of presumption under Section 139 of N.I.Act. It no way takes away the right of the accused person to rebut such presumption. Such presumption can be rebutted through cross-examination of the complainant, and/or upon producing any oral or documentary evidence. Here, in this case, the complainant has come forward with a very straight forward case that he has lent Rs.9,00,000/- on 17.12.2014. He proceeds to admit that he did not possess that amount on that date, this is at one level, and at another level, he would say, he withdrew the amount from his bank account. But the testimony of the P.W.2, the Bank Manager, and the bank statement [Ext.P6] would indicate that the complainant has not drawn any such amount.

8. Failure of consideration is adequate enough to rebut the presumption under Section 139 of N.I. Act, and here the revision petitioner has shook up the case of the complainant. It is a settled law that the accused need not prove his defence beyond all his doubts, but only need to do so, as to create a probability of the case of the complainant. This the revision petitioner has achieved. Necessarily, this Court has to hold that the judgment convicting and sentencing the revision petitioner by the District Court has to be interfered with.

9. In the result, the revision is allowed, and the judgement of the learned Additional District Judge (Fast Track Court) Vellore, in Crl.A.No.65 of 2018 dated 30.01.2019 is set aside.

-s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

tsg/ds

To:

1.The Judicial Magistrate(FTC),
Vellore.

2.The Chief Judicial Magistrate,
Vellore.

3.The Additional District Judge (FTC)
Vellore.

+1cc to Mr.A.Rajesh Kumar, Advocate SR.No.30156

Crl.R.C.No.735 of 2019

CA(CO)
GN(26/05/2022)