IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1203 of 2022
and
Crl.M.P.Nos.13203 & 13205 of 2022

S.Dhanasekaran ... Petitioner

Vs.

S.Kaviyarasu ... Respondent

Prayer: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C., to call for the records in C.A.No.82 of 2020 on the file of the learned Sessions Judge, Special Court for Trial of Cases registered under SC/ST (POA) Act, Namakkal and set aside the order dated 24.01.2022 confirming the conviction and sentence passed by the learned Judicial Magistrate NoI, Namakkal, Namakkal District in C.C.No.359 of 2017 by a judgment dated 21.11.2020.

For Petitioner : Mr.M.J.Riaz Ahamed

For Respondent : No appearance

ORDER

The Criminal Revision Petition has been filed to set aside the order dated 24.01.2022 passed in Crl.A.No.82 of 2020 on the file of the Special Court for Trial of Cases Registered under SC/ST (POA) Act, Namakkal.

2.The petitioner is the accused and the respondent is the complainant in C.C.No.359 of 2017 on the file of the Judicial Magistrate No.I, Namakkal. The learned Magistrate, after trial, convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo two years Simple Imprisonment and directed to pay sum of Rs.4,00,000/- as compensation to the respondent. Challenging the judgment of conviction and sentence passed by the learned Magistrate, he filed an appeal in C.A.No.82 of 2020 before the learned Sessions Judge, Namakkal and the same was made over to the Special Court for Trial of Cases Registered under SC/ST (POA) Act, Namakkal. The Special Judge dismissed the appeal, by confirming the judgment of the learned Magistrate. Aggrieved over the same, the accused has filed the present Criminal Revision Petition before this Court.

3.Learned counsel for the petitioner would submit that neither he borrowed any amount from the respondent/complainant nor issued any cheque. He borrowed sum of Rs.1,00,000/- from Vishnu Finance and issued a cheque in favour of Vishnu Finance in the presence of R.W.1. The respondent is one of the partner of Vishnu Finance and taking advantage of same, he misused the cheque and filed the complaint as the petitioner borrowed a sum of Rs.2,00,000/- from him individually and issued a cheque. The respondent has stated that he is a vegetable vendor and he has no other business, whereas, during the cross examination, he admitted that he is a partner to the Vishnu Finance, which clearly shows that the respondent has not come to the Court with clean hands. Further, the respondent is not able to answer for many questions with regard to the details of the cheque and for most of the questions he has stated that he does not know anything. Therefore, the respondent is not aware of the transaction and also the issuance of the cheque. Further learned counsel for the petitioner submitted that in order to substantiate his defence that he borrowed money from Vishnu Finance and repaid the same in instalments, he marked certain receipts given by Vishnu Finance. Hence, Judgment of the both the Courts are liable to be set aside and the revision may be allowed.

4.Though notice has been served on the respondent and his name also printed in the cause list, none appeared on behalf of the respondent.

5.Heard the learned counsel for the petitioner and perused the materials available on record.

6.The case of the complainant/Respondent is that the petitioner/accused borrowed sum of Rs.2,00,000/- from him on 05.08.2017 for urgent need and family expenses. In order to repay the money, the petitioner issued cheque No.017220 dated 07.09.2017. When he presented the cheque for collection on 08.09.2017 in the State Bank of India, Namakkal Branch, the same was returned with an endorsement “funds insufficient”. Thereafter, he sent statutory notice through his advocate and the same was received by the petitioner. The petitioner neither repaid money nor replied to the notice. Hence, he was constrained to file a private complaint before the learned Judicial Magistrate for the offence under Section 138 of the Negotiable Instruments Act. In order to substantiate his averments made in the complaint, he was examined as P.W.1 and four documents were marked as Exs.P1 to P4. On the side of the defence, one Vijayan was examined as R.W.1 and Ex.R1 was marked.

7.The main defence taken by the Revision Petitioner is that he never borrowed money from the respondent and issued cheque in favour of the respondent. He borrowed money from the Vishnu Finance for a sum of Rs.1,00,000/- and issued cheque and repaid some amount in instalments. Taking advantage of the unfilled signed cheque, the respondent created Ex.P1 cheque and filed a false complaint. In order to substantiate his defence, one Vijayan was examined as R.W.1 has stated that in his presence the petitioner borrowed money from Vishnu Finance and issued the cheque. During cross examination, he admitted that he stood as a guarantor and signed the documents. The petitioner has not stated what are the documents obtained by Vishnu Finance in which R.W.1 signed as guarantor or as witness. He has also not substantiated that Ex.P1 cheque issued only in favour of Vishnu Finance not to the respondent.

8. It is a well settled proposition of law, once the complainant filed a complaint and substantiates that the cheque was issued to discharge legally enforceable debt ie., initial burden has been proved by the complainant, then the onus of proof to be shifted to the accused. There is a statutory presumption under Section 139 of Negotiable Instruments Act that, once the accused admitted the execution of cheque and signature and the cheque has been issued to discharge the legally enforceable debt, it is for the accused to rebut the presumption in the manner known to law. No doubt, the accused need not rebut the presumption by letting in direct evidence, but, he can always rebut the presumption by preponderance of probabilities.

9. In this case, on a perusal of the materials, it is seen that execution of cheque and signature are admitted. The main defence taken by the petitioner is that the cheque was not issued to the respondent but it was issued to the Vishnu Finance. On receipt of notice, the petitioner has not sent any reply. Non sending of reply is not the sole reason to convict the

accused. However, when opportunity was given to the accused, he has to respond with suitable defence, But he has failed to do the same. It is stated by the petitioner that the cheque was issued only to Vishnu Finance, for which he examined one of his friends as R.W.1, he has not specifically stated the date on which he borrowed and what are the documents given with regard to the issuance of cheque to Vishnu Finance.

10.The scope of the revision is very limited and the revisional court while dealing with the revision has to see as to whether there is any perversity in the appreciation of evidence in the judgment. It is a well settled proposition of law that the Revisional Court cannot sit in the arm chair of the appellate court and re-appreciate the entire materials. Therefore, this Court has to see is there any perversity in the appreciation of the materials.

11. This Court does not find that the petitioner has rebutted the statutory presumption in the manner known to law. Therefore, there is no

reason to interfere with the judgment of both the Courts below. There is no merit in the Revision and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petitions are closed.

27.09.2022

mfa
Index:yes/No
Internet:yes/No

To

1. The Sessions Judge,
   Special Court for Trial of Cases registered under SC/ST (POA) Act,
   Namakkal.

2. The Judicial Magistrate NoI,
   Namakkal.

P.VELMURUGAN , J.

mfa

Crl.R.C.No.1203 of 2022
and
Crl.M.P.Nos.13203 & 13205 of 2022

27.09.2022