IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2022	PRONOUNCED ON : 28.06.2022

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.No.654 of 2014

V.K.Thangavelu, aged 50 years,
S/o.Karuppanna Gounder,
Proprietor of Vanchiamman & Co,
No.10, Vivekananda Nagar 1st Street,
Indira Garden Road, Uppilipalayam Post,
Coimbatore. ...Petitioner/Accused

/versus/

N. Shanmuga sundaram, aged 43 years,
S/o.(late) Nanjappan,
No.155, Padakkey Gounder Street,
Ondipudur, Coimbatore - 16. ...Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 read with 401 of Criminal Procedure Code, 1973, to set aside the conviction and sentence imposed on the petitioner by the First Additional District and Sessions Court, Coimbatore in C.A.No.157 of 2013 dated 01.02.2014 confirming the judgement passed by the Learned Judicial Magistrate, Fast Track Court - I, (at Magisterial level), Coimbatore in C.C.No.89 of 2011 dated 18.09.2013.

For Petitioner : Mr.C.Munusamy.

For Respondent : Mr.B.Gopalakrishnan

O R D E R

The Revision Petitioner/accused in C.C.No.89/2011, a private complaint filed for offence under section 138 of Negotiable Instrument Act.

2.The complaint states that, the petitioner borrowed Rs.1,50,000/-from the complainant/respondent during the First week of August, 2010 to meet out his business needs. Promised to repay the loan within 2 months. After repeated demand, the accused gave a cheque on 30/10/2010 for Rs.1,50,000/- from the Indian Bank, Singanallur, account maintained by the accused. On presentation for collection, same got returned as 'insufficient of funds'. Statutory Notice dated 04/11/2010 was sent to the accused. He received the notice on 08/11/2010. Though, the accused received the notice failed to reply. The complaint was presented before Judicial Magistrate-III, Coimbatore. Same was tried before the Court in C.C.No.89/2011. The Trial Court convicted and sentenced the accused to undergo one year R.I and to pay fine of Rs.5000/-, in default 3 months S.I.

3.The accused preferred appeal before the Additional District and Sessions Judge, Coimbatore in C.A.No.157/2013. The Appellate Court found no ground to interfere. Dismissed the appeal and confirmed the trial court judgment.

4.Against the concurrent finding by two Courts below, the present revision is filed.

5.The case of the complainant, the cheque Ex.P-1 dated 30/10/2010 was issued to discharge the existing debt borrowed during the first week of August 2010 by the accused from the complainant. On presentation the cheque on 04/11/2010, it got bounced. The cheque return memo Ex.P-2, the statutory notice Ex.P-3 and the Acknowledgement card Ex.P-4 are the documents relied by the complainant besides his oral evidence.

6.The defence to rebut the presumption and prove his innocence that the cheque was not given for any enforceable debt, but was stolen by the complainant, who was working in his workshop for daily wage for Rs.200/-. Three witnesses were examined for defence and 7 documents were marked as defence exhibits.

7.The case of the accused is that, he was running a workshop in the name of Sivaselvi Service Centre. The complainant was working under him between 2005 to 2010 for daily wage of Rs.200/- per day shift. The complainant showed him the notice received from Shriram Chit fund and asked for loan. He gave Rs.5000/- drawn from the bank account maintained by his firm M/s.Vanchiamman and Company at Indian Bank, Singanallur, to clear the loan. He kept three signed unfilled cheques of Indian Bank in his workshop. For the purpose of complainant use, the accused purchased a two wheeler and gave cheques of Vanchiamman & Co as security. Later, he paid the instalments and closed the two wheeler loan. The signed cheque kept along with other bank documents in his Sivaselvi Service Centre stolen by the complainant and filed the complaint.

8.DW-3, the Bank Official had deposed that the account maintained by the accused in the name of Vanchiamman & Co was operative from 2004 to 2007. From 2007, the account shows nil balance. The cheque was not relates to the accused. Hence the cheque was returned.

9.The specific case of the accused was, the cheque does not relates to the account maintained and the account was not in operation since 2007. No enforceable debt payable to the complainant. The complainant has not filed any document to show transaction between the complainant and the accused.

10.The Trial Court convicted the accused for the reason that accused admits in his evidence that, the signature in the instrument Ex.P-1 is his signature. He has not denied that the cheque was not given to the complainant. In such circumstances, the complainant is entitled for the presumption under Sections 118 and 139 of Negotiable Instrument Act. It is the burden on the accused to prove that the cheque was not given to legally enforceable debt. The evidence of D.W-2 is not direct and only hearsay. Further, regarding the plea that the cheque was issued for the account, the explanation given by DW-3, the bank official, the Trial Court has arrived at a conclusion that due to computerisation, the subject cheque which was issued by the Bank prior to computerisation was indicated as not issued to this account. Same defence taken in the appeal also stands negative.

11.In the revision, the Learned Counsel for the petitioner submitted that, the defence need not prove his case beyond reasonable doubt. The cheque Ex.P. 1 was of the year 2007. The account from which the cheque issued was not operative since 2007. The complainant was a worker under the accused and he has handling the bank transactions. He had no wherewithal to lend Rs.1,50,000/-. When the accused refused to give him loan to start a workshop of his own, the complainant took away the cheque signed and kept in the workshop and had misused it. The complainant admits that, he was working under the accused and he used to go to bank in respect of accused bank transaction. For him, the accused purchased a two wheeler on loan from ICICI Bank. In spite of these plea which are sufficient to rebutted the statutory presumption cast on him, the Courts below erred in holding the accused guilty.

12.The Learned counsel for the respondent/complainant submitted that, the accused has not discharged the burden of his innocence and having admitted the signature in the cheque, no plausible explanation through oral or documentary evidence given to disprove the case of the complainant.

13.Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondent.

14.In the complainant, it is stated that the accused borrowed hand loan of Rs.1,50,000/- during the first week of August 2010 with promise to repay it within two months. The exact date of borrowing not mentioned in the complaint or in the statutory notice. The complainant, in the cross examination admit that, he was working under the accused as daily wager for Rs.200/- per day shift, till July 2010. This fact not disclosed by the complainant in his complaint or in the statutory notice. The complainant used to handle the bank transactions for the accused and accompanying him to bank. The accused has arranged loan for purchase of two wheeler for the use of the complainant and the accused has paid the instalment dues on behalf of the complainant and deduct it from his wage. All these fact have been elucidated during the cross examination of PW-1.

15. The admission of the complainant while he was working under the accused he used to handle the bank documents of the accused and while he was working under the accused he was paid Rs.200/- per day shift besides the documentary evidence like the Ex.D-5 (statement of accounts of ICICI Bank for the two wheeler loan) and Ex.D-1 the account note books maintained by the accused to show the payment of wages to the complainant, are sufficient proof for the fact that, the complainant was working under the accused for Rs.200/- wage per day shift, he had no means to buy a two wheeler. Hence, the accused arranged for loan and stood surety and given his cheque. Above all, the complainant was trusted by the accused and allowed him to handle his bank documents including cheques. Suppressing all these facts, the complaint filed as if hand loan was given to the accused during the first week of August 2010.

16. While the accused has shifted his burden of proof by preponderance of probability, through the facts elucidated through cross examination of P.W-1, defence witnesses and documents like Ex.D-1 (wage payment note books), Ex.D-4 and Ex.D-5 (statement of accounts from ICICI Bank),the complainant cannot still claim statutory presumption of liability. The complainant had not even given the exact date of advancing the hand loan or source of his money. He has not disclosed his employment under the accused and entrustment of bank documents with him. In such circumstances of fact, mere admission of signature in the cheque will not be sufficient to draw the statutory presumption of liability. More so, the proximity of the complainant to the instrument while he was under the employment of the accused and the accused giving a plausible explanation how his blank signed cheque could have been fallen into the hands of the complainant and same is probable, the accused by all probability had discharged its burden to show that, the subject cheque might have stolen from his workshop.

17.The Courts below, unfortunately carried away by the provisions and case laws deals with statutory presumption under Sections 118 and 139 of Negotiable Instrument Act without scrutinizing the fact elucidated in the cross examination of P.W-1, more particularly those facts which were deliberately suppressed by the complainant with ulterior intention of screening relevant facts from the Court.

18. The correctness and legality of the orders passed by the

Courts below is erroneous and has led to miscarriage of justice. Hence, the Criminal Revision is allowed. The conviction and sentence passed by the Learned Judicial Magistrate, Fast Track Court-I, Coimbatore, in C.C.No.89 of 2011 is hereby set aside. Fine amount paid if any, shall be refunded to the petitioner. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The I Additional District and Sessions Court,
   Coimbatore.

2. The Judicial Magistrate,
   Fast Track Court - I, (at Magisterial level),
   Coimbatore.

3. The Judicial Magistrate-III,
   Coimbatore.

Copy To

The Section Officer,
Criminal Section (Records)
High Court, Madras.

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.40304

Crl.R.C.No.654 of 2014

SKM(CO)
RGA(12/07/2022)