

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2022

CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CRL.R.C.NO.725 OF 2014

R.Ranganathan

.. Petitioner

Vs.

P.Raghupathy

..Respondent

PRAYER :

Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in C.A.No.102 of 2013, dated 22.05.2014, on the file of the learned I Additional Sessions Judge, Chennai and confirming the order/judgment passed in C.C.No.2476 of 2010, dated 02.05.2013 on the file of learned VII Metropolitan Magistrate, George Town, Chennai and set aside the same.

For Petitioner : Mr.B.R.Shankaralingam

For Respondent : Mr.K.N.Nataraj

ORDER

This Criminal Revision Case is filed against the concurrent finding of the Courts below in a private complaint arising out of Section 138 of Negotiable Instruments Act.

2. The learned counsel appearing for the revision petitioner submits that the complainant has failed to prove the existing liability and unexplained reason for different pen and ink used for the signature found in the cheque and the content of the cheque goes to the root of the matter that the blank cheque of the accused has been misused by the complainant, who has no privity of contract with the accused. On receipt of statutory notice, the accused has replied stating the circumstances under which the cheque was issued and there is no

liability or legally enforceable debt to the complainant. In view of specific defence and the discharge of presumption under the statute by preponderance of probability, the accused ought to have been acquitted. But without appreciating the evidence and without any proof of payment or privity of contract, the Court below erred in holding the accused guilty of offence under Section 138 of Negotiable Instruments Act.

3. The learned counsel appearing for the respondent / complainant would submit that the accused and the complainant had dealing in respect of procuring land for the real estate business of the complainant. The accused acted as a mediator for commission in respect of the property. To advance money and disburse the same to intending sellers and gave the title deeds for legal opinion, the accused received Rs.5,00,000/- from the complainant. However, even after one year he could not materialize the deed, hence the complainant demanded return of the money advanced. Accordingly, the accused gave a cheque bearing No.987306 for Rs.5,00,000/- dated 11.07.2009 drawn on Canara Bank, Kodur branch. When the cheque was presented, the same was returned with an endorsement "Funds Insufficient". Therefore, the statutory notice was caused and the accused replied admitting the liability and promised to pay in due course, but he did not pay the amount. Hence the complaint was filed.

4. To prove the allegations, the complainant marked six (6) Exhibits and examined himself as PW.1. The accused neither produced the document nor given oral evidence to rebut the presumption, except alleging that there was no existing legally enforceable debt or liability and the cheque was not drawn in favour of the complainant.

5. The Courts below after examining the Cheque - Ex.P1, Return Memo - Ex.P2, Reply Notice - Ex.P5 as well as the copy of the Sale deed - Ex.P6, wherein, the property which the accused promised to arrange for sale has been transferred to his own relative subsequently after receiving part consideration. Hence pleaded that there is no error in the judgment of the trial Court and the appellate Court which has confirmed the trial Court judgment and convicted and sentenced him. The cheque amount is Rs.5,00,000/-, the trial Court has directed the accused to pay compensation of Rs.6,00,000/- and sentenced him to undergo Simple Imprisonment of 6 months. On appeal while confirming the conviction, modified the compensation component from Rs.6,00,000/- to Rs.5,00,000/- and also set aside the imprisonment.

6. This Court on considering the submissions made by the learned counsel for the revision petitioner and the judgment of the Hon'ble Supreme Court to buttress his submission

particularly the judgment rendered by the Hon'ble Supreme Court in Basalingappa Vs. Mudibasappa reported in 2019 Supreme Court Cases Online SC 491, wherein, the Hon'ble Supreme Court has considered the law of presumption under Section 139 of N.I.Act and had held that to raise a probable defence, it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon and the standard of proof required for the accused in Negotiable Instruments Act is only a preponderance of probability and not proved beyond doubt.

7. This Court has no second opinion about the above observation of the Hon'ble Supreme Court. Whereas, in this particular case, in his reply notice, the accused clearly admits his liability to pay Rs.5,00,000/- and the issuance of cheque to discharge the existing debt. He further given an undertaking that he will pay the money back once he sells the property. However, from Ex.P.6, this Court finds that instead of abiding his own promise, the accused had in fact alienate the property to his own relative and therefore, the attempt to rebut the presumption found to be an misadventure on the part of the accused in the light of his own admission found in the reply notice Ex.P5.

8. In the light of the above discussions, this Court finds no merit in this case. Hence, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional Sessions Judge, Chennai.

2. The VII Metropolitan Magistrate, George Town, Chennai.

+lcc to Mr.K.N.Nataraj, Advocate, S.R.No.41854

Crl.R.C.No.725 of 2014

KN(CO)

PM/20/07/2022