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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.R.C.No.840 of 2014

G.Thanickachalam

.. Petitioner

Versus

R.Jayasankar

.. Respondent

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in C.A.No.28 of 2013 by order, dated 08.04.2014 on the file of the learned Principal Sessions Judge, Cuddalore, confirming the conviction and sentence passed in S.T.C.No. 467 of 2011, by order, dated 21.11.2013, by the learned Judicial Magistrate No.II, Cuddalore.

For Petitioner : Mrs.V.Valarmathi
Legal Aid Counsel

For Respondent : Mr.E.Sathiyaraj

ORDER

This Criminal Revision Case is filed by the petitioner/accused, aggrieved by the judgment of the learned Judicial Magistrate No.II, Cuddalore in S.T.C.No.467 of 2011, thereby, convicting the petitioner for an offence under Section 138 of Negotiable Instruments Act and sentencing to undergo Simple Imprisonment for a period of six months and to pay a sum of Rs.10,00,000/- as compensation to the respondent/complainant within two months, in default to pay compensation to the respondent/complainant, to undergo Simple Imprisonment for a period of two months and the judgment of the learned Principal Sessions Judge, Cuddalore, dated 08.04.2014 in CrI.A.No.28 of 2013, thereby, confirming the conviction and sentence imposed by the Trial Court.

2. This is a case arising out of a private complaint filed under Section 200 of Code of Criminal Procedure, for an offence under Section 138 of Negotiable Instruments Act. The case of the respondent/complainant is that on 27.05.2011, the



petitioner/accused requested for a hand loan of Rs.5,00,000/- for his family requirements and the respondent/complainant had lent the amount on the same day out of friendship. In repayment thereof, the petitioner/accused issued cheque bearing No.519297, dated 27.05.2011, drawn on Bank of Baroda, Cuddalore branch, promising to pay the amount within four months from the date of borrowal. However, the petitioner/accused did not do so. Therefore, the complainant presented the said cheque with his banker on 28.05.2011 and cheque was returned dishonoured. Therefore, he issued a statutory notice on 02.06.2011 and on the receipt of which, the petitioner/accused neither issued any reply nor paid the amount, within the stipulated time and hence the committed the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and therefore, he filed the private complaint.

3. Upon recording the sworn statement of the respondent/complainant, the learned Judicial Magistrate took the case on file in S.T.C.No.467 of 2011 and issued summons to the petitioner/accused. Upon appearance and being furnished with the copies, the petitioner/accused denied the charge and stood trial.

4. The respondent/complainant examined himself as P.W.1 and one Illangovan, Bank Manager, Bank of Baroda, Cuddalore as P.W.2. On the side of the respondent/complainant, the cheque issued by the petitioner/accused was marked as Ex.P1; the return memo issued by the bankers of the petitioner/accused, for returning the cheque for non-sufficient funds, was marked as Ex.P2; the statutory notice issued by the complainant was marked as Ex.P3 and the acknowledgment card as Ex.P4. Upon being questioned under Section 313 of Code of Criminal Procedure about the material evidence on record, the petitioner/accused denied the same as false. Thereafter, there was no oral or documentary evidence was let in on behalf of the defense and therefore, the Trial Court proceeded to hear both sides learned Counsel and by a judgment, dated 21.11.2013, the Trial Court found that from the cross-examination of the accused, it is seen that the petitioner/accused has admitted his signature in Ex.P1 cheque and it is his contention that the cheque was issued to one Pakkiri in a transaction between him and said Pakkiri and he never issued any cheque to the complainant. Therefore, the Trial Court concluded that once the accused admits his signature in the cheque, then the presumption in favour of the respondent/complainant under Section 118 of Negotiable Instruments Act, 1881 arises and except for the cross-examination, the accused had not let in any positive evidence to rebut the presumption and therefore, convicted the accused and imposed the sentence as aforementioned.



5. Aggrieved by the same, the petitioner/accused preferred CrI.A.No.28 of 2013 on the file of the learned Principal Sessions Judge, Cuddalore and by a judgment, dated 08.04.2014, after independently appraising the evidence on record and considering the grounds raised by the accused in the appeal, the learned Appellate Judge came to the conclusion that even though it is the case of the petitioner/accused that the cheque was issued in favour of one Pakkiri and cheque was forcibly taken by him, the plea of force was not put to the respondent/complainant during the cross-examination and the accused also did not take any steps to examine the said Pakkiri or any other witnesses and therefore, confirmed the conviction and sentence imposed by the Trial Court as against which the present Revision Case is laid before this Court.

6. Heard Mrs.V.Valarmathi, learned Legal Aid Counsel on behalf of the petitioner/accused and Mr.E.Sathiyaraj, learned Counsel for the petitioner/accused.

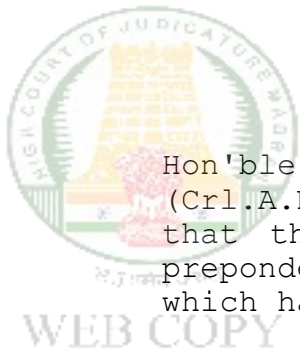
7. The learned Counsel for the petitioner would submit that the findings of the Trial Court that the accused has not denied about the cheque is erroneous inasmuch as it is the specific case of the petitioner/accused that he never issued the cheque in favour of the complainant and the cheque issued was obtained by one Pakkiri, in respect of a different transaction. She would submit that this being the case, there is no question of any presumption arising in favour of the respondent/complainant.

8. Even otherwise, the presumption of innocence is the basic principle criminal jurisprudence and the respondent/complainant ought to have been let in prima facie evidence to prove his capacity to lend such a sum of Rs.5,00,000/- as loan to the accused. In the absence of the same, the cross-examination of the complainant by the accused that the cheque was issued only to one Pakkiri, would amount to rebuttal evidence and therefore, she would submit that in the absence of any other supporting document, such as promissory notice etc., the Trial Court and the lower Appellate Court ought to have held that the accused has rebutted the presumption and ought to have acquitted the accused.

9. In support of her submission, the learned Counsel relied upon the judgment of the Hon'ble Supreme Court of India in K.Subramani Vs. K.Damodara Naidu (CrI.A.No.2402 of 2014, dated 13.11.2014)¹, for the proposition that the presumption can be rebutted and the accused can rebut the same in the manner as he chooses.

10. The learned Counsel also relied upon the judgment of the

¹ (2015) 1 SCC 99



Hon'ble Supreme Court of India in Rangappa Vs. Sri Mohan (Crl.A.No.1020 of 2010, dated 07.05.2010)², for the proposition that the standard of proof required for rebuttal is that of preponderance of probability and it is only the prosecution which has to prove the case beyond doubt.

11. She would further press into service the judgment of the Hon'ble Supreme Court of India in Krishna Janardhan Bhat Vs. Dattatraya G.Hegde (Crl.A.No.518 of 2016, dated 11.01.2008)³, thereby, relying upon the paragraph No.23 that it is not necessary that the accused should examine himself or any particular person and the accused can even draw the attention of the Court to the cross-examination of the complainant and the circumstances on record, to demonstrate that he has rebutted the presumption.

12. Opposing the said submissions, Mr.E.Sathiyaraj, learned Counsel appearing on behalf of the respondent/complainant would submit that in this case, the complainant has come up with clear and categorical case in the complaint itself that on 27.05.2011 being a person acquainted the accused had requested the complainant to lend him money and the respondent/complainant has lent a sum of Rs.5,00,000/- . In repayment thereof, the cheque has been issued. The factum of presentation, dishonour and the issue of statutory notice, within the time framed as required under Section 138 of Negotiable Instruments Act, has been proved. The Manager of the banker of the accused has also been examined as P.W.2. The complainant has got into the box as P.W.1 and deposed about his lending of the money. Therefore, the presumption under Section 118 of Negotiable Instruments Act as well as under Section 139 of Negotiable Instruments Act arises in favour of the respondent/complainant and except the cross-examination suggesting that the cheque was issued only to one Pakkiri, which is denied by the respondent/ complainant nothing has been done by the accused to rebut the presumption. The petitioner should have examined the said Pakkiri or should have produced any other document, in support of his defence. Therefore, the accused has not even raised a probable defence and in the absence of any other rebuttal evidence, the respondent/complainant need not further prove his capacity to pay a sum of Rs.5,00,000/-. The complainant need not further produce any statement of account or other document, in support of lending the money and therefore, prayed that this Court should dismiss the present revision.

13. I have perused the materials on record and considered the rival submissions of both sides learned Counsel. I am in agreement with the learned Counsel for the

² (2010) 11 SCC 441

³ (2008) 4 SCC 54



respondent/complainant that when the signature of the accused in the Cheque is not denied, there is presumption in favour of the complainant. Apart from merely suggesting that the cheque was issued to one Pakkiri not to the complainant nothing else has been done by the petitioner in this case. When the suggestion is denied, it requires some corroborating evidence on behalf of the accused in any nature whatsoever to make the said defence a probable one. Mere ipse dixit on behalf of the accused only to the cross-examination of P.W.1 alone would not in any manner amount to rebutting the presumption, when the respondent/complainant has not admitted in his cross-examination that the the cheque was issued only to Pakkiri. When the accused was unable to elicit any favourable answer in the cross-examination, then by the mere questions posed in the cross-examination alone, he cannot claim that he has rebutted the presumption. Therefore, when there is no other corroboratory material which is available on record or when there is no other evidence let in by the accused, I am afraid that the petitioner/accused has done anything to rebut the presumption.

14. There is no quarrel with the propositions made out in the three judgments relied upon by the learned Counsel for the petitioner/accused. It is true that the burden of proof for rebuttal of presumption is only preponderance of probability and the accused need not necessarily get into the box. He can even rebut the presumption on the basis of the material circumstances on record. But in this case there is nothing on record which was brought forth by the accused either by way of cross-examination or by way of any other evidence which will statisfy even the preponderance of probability. Therefore, no fault whatsoever can be found in the conclusions of the Trial Court as well as the lower Appellate Court in returning the verdict of guilt.

15. The learned Counsel for the petitioner also submitted that in the absence of promissory note and the other documents, the awarding of the Trial Court twice the amount of cheque as compensation was also uncalled for. Considering the arguments made on behalf of the petitioner/accused, I am inclined to partially modify the award of compensation from double the cheque amount to the cheque amount alone and there will not be any default sentence. Except the above, the other sentence shall remain same.

16. The Criminal Revision Case is partly allowed as hereunder:

(i) The conviction of the petitioner by the Trial Court as well as the lower Appellate Court for an offence under Section 138 of Negotiable Instruments Act stands confirmed;



(ii) The sentence imposed by the Trial Court and the lower appellate court to undergo Simple Imprisonment for a period of six months is also confirmed;

(iii) The other part of the sentence, namely the direction to impose compensation to pay a sum of Rs.10,00,000/- and in default to undergo two months simple imprisonment is modified. The petitioner accused is ordered to pay a sum of Rs.5,00,000/-, being the cheque amount as compensation, to the respondent/complainant.

17. The Criminal Revision Case is ordered accordingly.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

grs

To

1.The Principal Sessions Judge, Cuddalore.

2.The Judicial Magistrate No.II, Cuddalore.

+2cc to Mr.A.K.Velan, Advocate, S.R.No.422, 478

+2cc to Mrs.V.Valarmathi, Advocate, S.R.No.180

Cr1.R.C.No.840 of 2014

AD(CO)
CT 12/01/2022