IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1317 of 2022
and
Crl.M.P.No.14025 of 2022

Jayagopal ... Petitioner

Vs.

D.Prakash ... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records in Criminal Appeal No.14 of 2020 on the file of the V Additional Sessions Judge, City Civil Court, Chennai and set aside the order dated 31.03.2022 confirming the conviction and sentence passed by the learned Metropolitan Magistrate Court, FTC-II, Egmore, Allikulam in C.C.No.16136 of 2008 by a Judgment dated 04.12.2019 by allowing this revision.

For Petitioner : Mr.P.K.Ganesh

ORDER

The Criminal Revision Case has been file seeking to set aside the Judgement in Criminal Appeal No.14 of 2020 on the file of the V Additional Sessions Judge, City Civil Court, Chennai and set aside the order dated 31.03.2022 confirming the conviction and sentence passed by the learned Metropolitan Magistrate, FTC-II, Egmore, Allikulam in C.C.No.16136 of 2008 by a Judgment dated 04.12.2019.

2. The petitioner is the accused and the respondent is the complainant. The respondent had registered a private complaint against the petitioner and three others under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before the Metropolitan Magistrate, FTC-II, Egmore, Allikulam, and the learned Magistrate taken the case on file in C.C.No.16136 of 2008. On conclusion of trial, the learned Magistrate not found guilt of the 4th accused and thereby, acquitted the 4th accused. Further, the learned Magistrate found guilt of the accused 1 to 3 for the offence under Section 138 of Negotiable Instruments Act and thereby, convicted and sentenced A2 and A3 to undergo each one year Simple Imprisonment and ordered A1 to A3 to pay the cheque amount of Rs.45 lakhs as compensation

to the complainant in default, A2 and A3 to undergo further 3 months simple imprisonment. Challenging the said Judgment of conviction and sentence, the petitioner/A2 and A3 filed appeal before the V Additional Sessions Judge, City Civil Court, Chennai, in Criminal Appeal No.14 of 2020. The learned Sessions Judge after hearing the arguments, dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Aggrieved over the same, the petitioner/A2 has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that in the statutory notice, the respondent has not mentioned the amount of Rs.45 lakhs and the respondent has not stated how he knows the petitioner/A2 and the other accused. Further, he has not stated the mode of payment. Obviously, the respondent could not have paid such a huge amount by cash. Therefore, if the respondent had really paid the amount of Rs.45 lakhs to the accused firm, he might have paid the same through RTGS and if, it was paid through RTGS, he would have produced the bank statement, whereas he has not produced the same. Further, the respondent during his cross examination has admitted that he has not shown this money in his Income Tax Returns. Therefore, the

respondent has not proved that the consideration was paid to the accused firm. Further, the respondent has not filed the partnership deed of the 1st accused firm and the respondent in his complaint has mentioned that the petitioner/A2 and 3rd accused are in charge for the day to day business activities whereas in the said Promissory Note, there is no address or seal of the 1st accused firm. Further, the 4th accused is none other than the father of the petitioner/A2. When the trial Court acquitted the 4th accused, it should have acquitted the other accused also since the respondent has not stated any details even in the very statutory notice. Therefore, there is no cause of action against the petitioner to file a complaint under Section 138 of Negotiable Instruments Act. He would further submit that even the Ex.P.1/promissory note dated 09.01.2008, stated to have been executed by the petitioner/A2, shows that only the signature alone has been obtained by the respondent and no company seal was affixed. The other partner/3rd accused namely Murali, who is alleged to have signed the promissory note as witness, is also without company seal. Further, the 4th accused namely Balaraman who is none other than the father of the present petitioner, alleged to have stood as guarantor and signed in the said promissory note, whereas the respondent has not obtained any signature from the other partner namely T.R.Ramesh in the said promissory note either as witness or guarantor or borrower which creates suspect over the prosecution. Therefore, both the trial Court as well as the appellate Court have failed to properly appreciate the evidences and also failed to appreciate the financial status of the respondent as to whether the respondent has got financial capacity to lend such a huge amount of Rs.45 lakhs when there was no statement for bank transaction or Income Tax Returns or any other records to show that the respondent was having financial capacity to lend such a huge amount to the 1st accused firm. Further, when the petitioner and the other partner/A3 filed appeal before the appellate Court against the Judgment of the trial Court, the appellate Court as a fact finding Court, instead of re-appreciating the evidence and giving independent findings, simply endorsed the views of the Magistrate and confirmed the Judgment of the Magistrate which is perverse and therefore, the Judgments of both the trial Court as well as the appellate Court, are liable to be set aside and the revision has to be allowed.

4. Even though the matter came up for admission, since it is the case for the offence under Section 138 of Negotiable Instruments Act and the revision is filed by the accused against the concurrent judgment of conviction, this

Court is inclined to dispose of the revision at the admission stage itself by going through the materials on record.

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

6. The case of the prosecution is that A1 is a partnership firm. A2 and A3 are the partners of the said firm and the 4th accused is the father of the petitioner/A2. The petitioner/A2, A3 and A4 approached the respondent in the month of January 2009 and requested for loan of Rs.50 lakhs for the development of the business and subsequently, petitioner/A2 and A3 borrowed a sum of Rs.45 lakhs from the respondent 09.01.2008 for which, the petitioner herein/A2 executed a promissory note dated 09.01.2008 and promised to repay the said amount within six months, with interest @ 12% per annum. In the said promissory note, A3 signed as witness and A4 signed as guarantor for the said loan. Thereafter, when the respondent made repeated demands to repay the said loan amount, the petitioner/A2 and A3 issued a cheque bearing No.371287 dated 24.10.2008 drawn at Andhra Bank, Annanagar Branch, Chennai for a sum Rs.45 lakhs and when the respondent

presented the said cheque for collection on 24.10.2008 in his bank namely Indian Bank, Kolathur Branch, Chennai, the same was returned on 25.10.2008 for the reason "Account Closed". Therefore, the respondent issued statutory notice dated 31.10.2008 to the petitioner and other accused and the same was also received and acknowledged by the petitioner/A2. However, he neither repaid the money nor sent any reply. Therefore, the respondent was constrained to file the complaint before the Magistrate under Section 200 Cr.P.C. for the offence under Section 138 Negotiable Instruments Act.

7. In order to substantiate the case of the respondent/complainant, the respondent/complainant was examined as P.W.1 and he marked corresponding documents viz., Promissory Note/Ex.P.1, Cheque/Ex.P.2, return memo/Ex.P.3, Statutory notice/Ex.P.4, Postal Acknowledgements/Exs.P.5 and P6, Bank Statement/Ex.P.7 and thereby, the respondent/ complainant proved his case that after the cheque was dishonoured, he sent a statutory notice to the petitioner and the same was also acknowledged by the petitioner however, within the statutory period, the petitioner neither repaid the money nor sent any reply and therefore, there

was a cause of action for filing the complaint. Therefore, there is a presumption under Section 139 of Negotiable Instruments Act that the cheque was issued to discharge the legally enforceable debt and it is for the petitioner/accused to rebut the presumption in the manner known to law. No doubt, the accused need not get into the witness box to rebut the presumption by direct evidence and he can rebut the presumption by preponderance of probabilities. On the side of the petitioner/A2, no evidence was let in except marking of pass book as Ex.D1.

8. It is settled proposition that the revision Court has got very limited scope to interfere. When there is no perversity in the appreciation of evidence and there is no illegality or infirmity in the Judgments of both the Courts below namely the trial Court and the appellate Court, the revision Court will not interfere with the findings of the Courts below.

9. In this case, the petitioner has not denied the signature in the cheque and not denied the execution of the cheque in favour of the respondent. Therefore, the respondent proved his initial burden. Therefore, the onus of proof shifted on the petitioner herein/A2. Though the accused need not rebut

the presumption by direct evidence, the accused can always rebut the presumption by preponderance of probabilities whereas, in this case, the petitioner/A2 has not rebutted the presumption in the manner known to law. The main defence taken by the petitioner/A2 is that the respondent has not proved his financial capacity and he has not specifically stated in the statutory notice about the mode of payment of amount and he has also not produced any statement of accounts or bank transaction statement or Income Tax Returns. Except these, he has not taken any other defence regarding genuiness of the execution of cheque and promissory note. Once the petitioner admitted the execution and signature in the cheque, then the statutory presumption under Section 139 of the N.I. Act is that the cheque has been issued towards discharge of legally enforceable debt. Then it is for the accused to rebut the presumption in the manner known to law. Mere non production of other records cannot be a ground to disallow the complaint. However, the petitioner himself admitted the transaction between the petitioner and the respondent and execution of cheque and the signature found in the cheque. The petitioner stated that since the respondent had not obtained the seal of the partnership firm in the promissory note and therefore, the petitioner has not borrowed the money in the capacity of the partnership firm. But the petitioner admitted the signature and execution of the cheque and he has not established his defence that he has not borrowed the money and executed the promissory note. Therefore, there is presumption that the cheque was issued towards discharge of legally enforceable debt. The defence taken by the revision petitioner has not made out any ground to allow the revision. This Court does not find any perversity, illegality and infirmity in the orders passed by the Courts below and there is no merit in the revision. Therefore, the revision is liable to be dismissed.

10. Accordingly, this Criminal Revision Case is dismissed at the admission Stage itself. Consequently, connected Miscellaneous Petition is closed.

08.09.2022

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To

1. The V Additional Sessions Judge,
   City Civil Court, Chennai.

2. The Metropolitan Magistrate Court, FTC-II,
   Egmore, Allikulam, Chennai.

P.VELMURUGAN,J.

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