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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 17.06.2022]

[PRONOUNCED ON : 24.06.2022]

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL.R.C.NO.1146 OF 2017

P.Thangaraj
S/o.Palanisami Gounder

... Petitioner/
Appellant/Accused

vs.

K.K.Srinivasan
S/o. Gurusami Gounder

... Respondent/
Respondent/Complainant

Prayer:

Criminal Revision petition filed under Sections 397 r/w 401 of Cr.P.C, to set aside the Judgement and conviction dated 19.07.2017 made in C.A.No.118 of 2016 on the file of II Additional District Judge, Erode confirming the Judgement dated 02.05.2016 made in S.T.C.No.523 of 2013 on the file of Judicial Magistrate (F.T.C.No.I), Erode.

For Petitioner : Mr.C.S.Saravanan

For Respondent : Mr.I.C.Vasudevan

ORDER

This Criminal Revision petition is filed to set aside the Judgement and conviction dated 19.07.2017 made in C.A.No.118 of 2016 on the file of II Additional District Judge, Erode confirming the Judgement dated 02.05.2016 made in S.T.C.No.523 of 2013 on the file of Judicial Magistrate (F.T.C.No.1), Erode.

2. The respondent filed a complaint under Section 138 of Negotiable Instrument Act alleging that he had given a loan of Rs.4,00,000/- (Rupees Four Lakhs) to the accused/petitioner herein and towards discharge of the said loan, the petitioner



had issued a cheque for Rs.4,00,000/- (Rupees Four Lakhs) dated 27.12.2012; that the cheque was presented for collection and was returned by the Banker for the reason "Funds insufficient"; that he had issued a statutory notice to the correct address and the same was returned unserved. The respondent examined himself as P.W.1 and marked Ex.P.1 to Ex.P.4. The petitioner examined two witnesses on his side and marked five documents. The petitioner's defence during the trial was that the cheque was not issued in discharge of his liability.

3.The petitioner's case is it was one Vadivel D.W.2 who had taken loan from one Mr.Devaraj and the cheque was given as security for the said loan; that in spite of Vadivel D.W.2 clearing the entire loan the said Devaraj had not returned the cheque; that the petitioner had no connection with the complainant whatsoever. In support of that defence the petitioner examined D.W.2, on his side. The further defence of the accused was that the notice was not served on him and hence the complaint was not maintainable.

4.After considering the evidence on record and hearing either side, the trial Court by the Judgement and order dated 02.05.2016 in S.T.C No.523 of 2013 convicted the petitioner under Section 138 of Negotiable Instrument Act and sentence him to undergo Six (6) months Simple Imprisonment and to pay a fine of Rs.5,000/- (Rupees Five Thousand Only) and in default 15 days Simple Imprisonment. The petitioner challenged the conviction and sentence before the II Additional Sessions Judge, Erode in C.A.No.118 of 2016. The learned Sessions Judge dismissed the appeal and confirmed the Judgement of the trial Court. Aggrieved by the concurrent findings of the Courts below, the accused has preferred the present Criminal Revision.

5. Heard Mr.C.S.Saravanan, learned counsel appearing for the revision petitioner and Mr.I.C.Vasudevan, learned counsel appearing for the respondent.

6.The learned counsel for the revision petitioner would submit that the Courts below erred in convicting the petitioner without considering the material fact that there was no legally enforceable debt. The revision petitioner had examined D.W.2 to support his defence that the cheque was given a security for a loan obtained by D.W.2 viz. Vadivel, from one Devaraj. The learned counsel further submitted that no statutory notice was served on the petitioner.



7. The learned counsel for the respondent/complainant would submit that the complainant has proved his case beyond reasonable doubt; that the petitioner has not rebutted the statutory presumption in the manner known to law; that the notice was sent to the last known correct address of the petitioner and it is deemed service of the notice. He further submitted that the Courts below have rightly disbelieved the defence of the petitioner and convicted him for the offence under Section 138 of Negotiable Instrument Act.

8. Before advertent to the rival submissions, it is necessary to reiterate the principle that while exercising Revisional Jurisdiction involving concurrent finding at two Courts below, the High Court cannot act as at a second Appellate Court.

9. It is trite law that in a Revision challenging Appellate Court's Judgement, confirming the Judgement of trial Court, the Court can appreciate the evidence only to the limited extent of ascertaining if the finding is perverse, unreasonable or implausible.

10. In the case of hand, we find that the complainant has established the fact that the cheque was issued by the accused; that the cheque was dishonoured for the reason "Funds insufficient"; and that statutory notice was sent to the correct address. Thus, since he has established the foundational facts the statutory presumption under Section 139 of Negotiable Instrument Act enures to his favour. The next question is whether the accused has rebutted that presumption. It is his case that the cheque was given a security for a loan which was said to have been taken by D.W.2 from one Devaraj. Though D.W.2 was examined, no documents were produced to probablise the version of the petitioner. Both the Courts below disbelieved the evidence of D.W.2 in the absence of any contemporaneous document to corroborate his version and rendered a finding to that effect. We find no infirmity in the said finding.

11. The next point raised by the petitioner is that he did not receive the statutory notice and hence the complaint is not maintainable. It is seen that the notice has been sent to the correct address. The Courts below found that there is a deemed service of notice since the respondent has taken notice to the correct address. We find no infirmity in the said finding as well.

12. It is well settled that the presumption under Section 139 is a rebuttal presumption. The accused can rebut the presumption



either by improbablising the version of the complainant through cross examination or by adducing evidence on his side. The accused can discharge the said burden by preponderance of probability. We find that the accused has failed to rebut the statutory presumption either by cross-examination of the complainant's witnesses or by adducing evidence on his side. The Courts below have found that the accused has not probablised his version and hence found him guilty. We do not find any infirmity or illegality or perversity in the finding of the Courts below.

13. In the result, this Criminal Revision is dismissed as being devoid of merits. The Conviction and sentence imposed by the Trial Court, which is confirmed by the Appellate Court stands unaltered. The trial Court is hereby directed to secure the accused and commit him to prison to undergo the sentence. The Registry is directed to transmit the original records if any, to the respective Courts forthwith.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dk

To

1. The learned II Additional District Judge,
Erode.
2. The learned Judicial Magistrate
(F.T.C.No.I), Erode.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.39705
+1cc to Mr.C.S.Saravanan, Advocate, S.R.No.39437

CrI.R.C.No.1146 of 2017

SSD(CO)
PM/07/07/2022