IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.264 of 2020

K.S.K.Ramesh ... Petitioner

Vs.

M.Kannan ... Respondent

Prayer:

Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., against the judgment dated 31.01.2020 made in C.A.No.3 of 2014 on the file of the I Additional District and Sessions Judge, Tindivanam modifying the judgment of conviction dated 22.01.2014 in C.C.No.36 of 2013 on the file of the Fast Track Court, Judicial Magistrate Level, Kallakurichi.

For Petitioner : Mr.U.M.Ravichandran

For Respondent : Mr.M.R.Thangavel

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ORDER

This Criminal Revision Case has been filed against against the judgment dated 31.01.2020 passed in C.A.No.3 of 2014 on the file of the I Additional District and Sessions Judge, Tindivanam modifying the judgment of conviction dated 22.01.2014 passed in C.C.No.36 of 2013 on the file of the Fast Track Court, Judicial Magistrate Level, Kallakurichi.

2. Petitioner is the accused. The respondent is the complainant in C.C.No.36 of 2013 on the file of the Fast Track Court, Judicial Magistrate Level, Kallakurichi, Tindivanam. The respondent/complainant has stated in his complaint that the petitioner borrowed sum of Rs.5,00,000/- from the complainant as hand loan to meet out his business requirements and for real estate business. When the said amount was demanded by the respondent/complainant, the petitioner/accused stated that at present he did not possess any cash in hand and he had assured that he would arrange the amount in his bank account and issued a cheque dated 23.04.2010 for a sum of Rs.5,00,000/-. On 23.04.2010, when the said cheque was presented for collection by the respondent, in his account in Indian Overseas Bank,

Kallakurichi Branch, the same was returned for "insufficient funds". Hence the respondent/complainant issued statutory notice to the petitioner/accused on 31.05.2010. The petitioner neither replied to the notice nor repaid the amount to the respondent/complainant. Hence the respondent was constrained to file a private complaint against the petitioner under Sections 138 and 142 of the Negotiable Instruments Act. The complaint was taken on file in C.C.36 of 2013 on the file of the Fast Track Court, Judicial Magistrate Level, Kallakurichi, Tindivanam. The learned Magistrate after hearing the arguments advanced on either side and on consideration of the materials available on record, found the petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act, convicted and sentenced him to undergo simple imprisonment for two years and to pay compensation of Rs.7,50,000/-. Challenging the said judgment of conviction, sentence and compensation, the petitioner herein filed Criminal Appeal in C.A.No.3 of 2014 on the file of the District and Sessions Judge, Villupuram and the same was made over to the I Additional District and Sessions Judge, Tindivanam. The learned I Additional District and Sessions Judge, Tindivanam after hearing the arguments advanced on either side, dismissed the appeal and modified the sentence passed by the trial court and the appellant was sentenced to undergo simple imprisonment for three months and to pay compensation of Rs.5,50,000/-. Against the dismissal and modification order passed by the appellate court, the accused has filed the present Criminal Revision Case before this Court.

3. Learned counsel for the petitioner submitted that the respondent has not stated any specific date on which he lent money to the petitioner and also the date on which he issued the cheque. Further the respondent has not stated how much amount the petitioner borrowed from him. During cross examination, the respondent admitted that after filing a complaint, the petitioner had repaid the amount of Rs.5,00,000/- and also admitted that the petitioner had issued two cheques, and since the petitioner had repaid the amount, one cheque was returned to the petitioner by the complainant/respondent. Once the respondent admitted that the petitioner repaid the amount, the petitioner has discharged his liability. Even P.W.1 who is the complainant has deposed in his cross examination that after filing the complaint, the petitioner had repaid sum of Rs.5,00,000/-. The Trial Court as well as the Appellate Court failed to consider the deposition of P.W.1 during

the cross examination that the petitioner herein had issued two cheques and since he repaid the amount, one cheque was returned. The respondent has not specifically stated either in his complaint or in his notice as to the date of issuance of cheque and the place of issuance of cheque and the amount which was lent to the petitioner. In the absence of any specific date, place and amount, the respondent/complainant is not entitled to recover the money. The present cheque is not issued to discharge legally enforceable debt. Further the learned counsel for the petitioner submitted that P.W.1 had never stated anything about the money which have been lent out to the petitioner in the income tax return filed by him. The petitioner has rebutted the legal presumption that the cheque was not issued to discharge legally enforceable debt. Further, no proof of affidavit was filed in support of Ex.P5 which has been relied upon by the trial court. In this case, the respondent has not stated as to when he lent money to the petitioner and the place of lending the money, date and place of issuance of cheque. Therefore, in the absence of the same, the respondent is not entitled to maintain the complaint. The Trial Court as well as the Appellate Court failed to appreciate the same and erroneously found the petitioner guilty which warrants interference of this Court.

4. Learned counsel for the respondent/complainant submitted that the signature of the petitioner in the cheque and the execution of the cheque are not in dispute. The petitioner has not stated that he never borrowed any money from the respondent. Even during cross examination also, he had not put a suggestion that the petitioner never borrowed money from the respondent and never issued a cheque. Even the suggestion put by the petitioner has clearly shows that the petitioner borrowed money, but the only defence taken by the petitioner is that the respondent has not stated in his complaint the date on which he borrowed money, amount which he borrowed and the date of issuance of cheque. However, the confirmation letter/under taking letter dated 01.03.2010 given by the petitioner clearly shows that he issued the cheque. Therefore, once the petitioner admitted the issuance of cheque, there is a legal presumption that the cheque was issued to discharge the legally enforceable debt. No doubt, the said presumption is a rebuttable presumption. Unless the accused rebut the presumption, the complainant is always entitled to succeed his complaint. As already stated, the petitioner has not denied his signature and execution of cheque, except the fact that the date on which he borrowed and date on which he issued cheque. Once the respondent filed a complaint

and examined himself as witness and produced the cheque, proof of presentation of the cheque before the bank and the proof for return of the cheque and the issuance of statutory notice within the stipulated time and the accused neither repaid the money nor has given any plausible reply to the notice, the respondent can approach the Court by way of filing the private complaint for the offence under Section 138 of the Negotiable Instruments Act. The respondent/complainant was examined as P.W.1. He narrated the entire incident by producing oral and documentary evidence. The foundational fact of borrowing money and issuance of cheque by the petitioner to the respondent was proved by the respondent/complainant. Then it is for the accused/petitioner has to rebut the presumption. Both the Trial Court as well as the Appellate Court rightly appreciated the oral and documentary evidence and convicted the petitioner. There is no merit in the Criminal Revision Case and the same is liable to be dismissed.

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

6. The respondent/complainant has filed a complaint for the offence under Section 138 of the Negotiable Instruments Act before the Fast Track Court, Judicial Magistrate Level, Kallakurichi. In his complaint, the respondent has stated that the petitioner/accused borrowed money from him and when it was demanded by the complainant, the petitioner issued a Cheque bearing No.090825, dated 23.04.2010 and when the said cheque was presented for payment on 23.04.2010 in the account of the complainant, the same was returned by the Bank for the reason “funds insufficient”. The complainant issued statutory notice to the accused on 31.05.2010 and though, it was acknowledged by the accused, he had neither re-paid the amount nor replied to the notice. Hence, the respondent filed a complaint under Section 200 Cr.P.C., read with Sections 138 and 142 of the Negotiable Instruments Act before the Fast Track Court, Judicial Magistrate Level, Kallakurichi, Tindivanam for the offence under Sections 138 of the Negotiable Instruments Act.

7. In order to prove the complaint, on the side of the respondent/complainant, four witnesses were examined and five documents were marked. However, on the side of the petitioner/accused, no oral and documentary evidence was produced.

8. A careful perusal of the complaint and the evidence of the complainant, who was examined as P.W.1, the respondent has substantiated his averments made in the complaint. The main defence taken by the petitioner's counsel is that the place and date of borrowing money and issuance of cheque have not been specifically mentioned in the complaint. A careful perusal of the confirmation letter/under taking dated 01.03.2010 given by the petitioner, it is found that the petitioner has stated that he borrowed money from the respondent/complainant and issued a cheque bearing No.090825. The fact remains that when the said cheque was presented before the Bank, for payment, the same was returned with an endorsement “insufficient funds”. Hence the respondent issued a statutory notice. Therefore, all the ingredients under Section 138 of the Negotiable Instruments Act were duly complied by the respondent/complaint. The petitioner has not denied the issuance of cheque and also the signature in the cheque. There is a statutory presumption under Section 139 of Negotiable Instruments Act that, when once the accused admitted the execution of the cheque and signature, and the cheque has been issued to discharge the legally enforceable debt, it is for the accused to rebut the presumption in the manner known to law. No doubt, the accused need not

rebut the presumption by letting in direct evidence, but, he can always rebut the presumption by preponderance of probabilities. Even during cross examination of P.W.1 who is the respondent/complainant, though the petitioner's counsel raised sufficient suggestions, he has not stated that he never borrowed money and he never issued cheque. Therefore, when once the borrowal of money and issuance of cheque are admitted, then it is for the accused to rebut the presumption under the provisions of Negotiable Instruments Act. Therefore, in the facts and circumstances of the case, this Court finds that except some bald defence, the petitioner has not rebutted the statutory presumption in the manner known to law.

9. The trial court and the appellate court have appreciated and re-appreciated the evidence and found that the cheque was issued only to discharge legally enforceable debt and when the said cheque was presented for collection, the same got dishonored. The statutory requirements have been duly complied with by the respondent/complainant. Further, the respondent has established the foundational fact that the petitioner issued cheque which is for legally enforceable debt or liability. Therefore, the Court can draw the

statutory presumption. The only question is as to whether the petitioner has rebutted the presumption or not. On a reading of the materials, this Court does not find any material to show that the petitioner has rebutted the statutory presumption in the manner known to law.

10. The learned counsel for the petitioner in support of his contentions placed reliance upon the decisions reported in

1. *2017(1) MWN(Cr.)DCC 108 (Mad) [Mohamad Irfan Vs. Velukannan]*
2. *2019(2) MLJ(Criminal) 44 [M/s.Jay A.R.Enterprises Vs. M/s.Scraft Traders]*

The Citations referred to by the learned counsel for the petitioner is not applicable to the present case at hand. The facts in the above referred to decisions are entirely different from the present case on hand and distinguishable. In this case, borrowal of money, issuance of cheque and signature in the cheque are not denied. Discharge of liability is not proved.

11. The scope of the revision is very limited and the revisional court while dealing with the revision has to see as to whether there is any perversity in the appreciation of evidence in the judgment. It is a well settled proposition

of law that the Revisional Court cannot sit in the arm chair of the appellate court and re-appreciate the entire materials and it is not open to this Court to sit in this revision case over the factual findings arrived at by both the Courts below.

12. This Court does not find that the petitioner has rebutted the statutory presumption in the manner known to law. Therefore, there is no reason to interfere with the judgment of the Appellate Court and the same is confirmed. There is no merit in the Revision Case and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed. Since the petitioner is on bail, the trial court is directed to secure the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set of under Section 428 Cr.P.C.,

24.02.2023
(2/2)

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Index:yes/No
Speaking Order:Yes/No
Neutral Citation: Yes/No

To

1. The I Additional District and Sessions Judge,
   Tindivanam.

2. Judicial Magistrate
   Fast Track Court, Judicial Magistrate Level,
   Kallakurichi,
   Tindivanam.

3. The Public Prosecutor
   High Court, Madras.

P.VELMURUGAN, J.

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