



Crl.R.C.No.266 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.266 of 2020

and

Crl.M.P.No.18779 of 2022

K.S.K.Ramesh

... Petitioner

Versus

Ragothaman

... Respondent

Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the judgment passed in Fast Track Court, Judicial Magistrate Court, Kallakurichi in C.C.No.37 of 2013 dated 22.01.2014 modified by the I Additional District and Sessions Judge, Tindivanam in C.A.No.4 of 2014 dated 31.01.2019.

For Petitioner : Mr.UM.Ravichandran

For Respondent : Mr.R.Bharath Kumar

ORDER

The Criminal Revision Case is arising out of the judgment dated 31.01.2020 passed in C.A.No.4 of 2014 by the learned I Additional District



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and Sessions Judge, Tindivanam, modifying the judgment dated 22.01.2014 in C.C.No.37 of 2013 by the learned Judicial Magistrate, Fast Track Court, Kallakurichi.

2. The case of the respondent/complainant is that the petitioner/accused borrowed a sum of Rs.5,00,000/- from the complainant as a hand loan to meet out his business transaction and for repaying the said amount, the accused issued a cheque bearing No.090823 drawn in Canara Bank Distilleries Branch, Pondicherry dated 15.04.2010. When the said cheque was presented for collection, the same was returned as "funds insufficient". Hence, the complainant issued a statutory notice to the accused on 05.05.2010 seeking him to repay the amount and the accused received the said notice on 07.05.2010, but neither he repaid the amount nor sent any reply for the same. Hence, the respondent/complainant was constrained to file a private complaint in C.C.No.37 of 2013 before the learned Judicial Magistrate, Fast Track Court, Kallakurichi against the petitioner/accused for the offence under Section 138 of Negotiable



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Instruments Act, 1881 [hereinafter referred to as 'N.I.Act' for the sake of convenience] and Section 420 IPC. The respondent/complainant, in order to substantiate his complaint, examined himself as P.W.1 and marked 5 documents as Ex.P1 to P5 and on the side of the petitioner/accused no oral evidence was adduced and no documentary evidence was produced.

3. After trial, the trial Court found guilty of the petitioner/accused for the offence under Section 138 of N.I. Act and convicted and sentenced the petitioner/accused to undergo simple imprisonment for a period of two years and to pay a compensation of Rs.7,50,000/- within a period of one month from the date of the judgment. Challenging the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.4 of 2014 before the learned I Additional District and Sessions Judge, Tindivanam. By judgment dated 31.01.2020, the appellate Court modified the judgment of the trial Court and convicted and sentenced the petitioner to undergo simple imprisonment for a period of three months and to pay a fine of Rs.5,50,000/- to the complainant within one month from the date of the judgment and



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dismissed the appeal. Aggrieved over the same, the petitioner has preferred the present revision before this Court.

4. The learned counsel for the petitioner submitted that P.W.1 in his cross examination had admitted that the amount advanced as loan to the petitioner is the amount of partnership firm, but the present complaint has been filed in individual capacity instead of filing in the name of the partnership firm. To prove the same, none of the partners were examined. Only in order to discharge the liability, the petitioner had issued a cheque for collateral purpose. Thereafter, the petitioner repaid the amount of Rs.5,00,000/- during the Deepavali Festival in the year 2009. Even after repayment of the cheque amount, the respondent did not return the cheque and discharge the petitioner from the said transaction. P.W.1/Ragothaman in his cross examination admitted the repayment of the amount and the same was corroborated with the evidence of P.W.1/Kannan in another complaint in C.C.No.1215 of 2010. Since the repayment is admitted, the admitted facts need not be proved by the accused through cogent evidence.



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Therefore, the burden of proof is not on the accused. He further submitted that as the money borrowed by the petitioner was already repaid, the cheque is not a legally enforceable debt. Both the Courts below having failed to consider the above facts, convicted and sentenced the petitioner.

5. The learned counsel for the respondent submitted that the petitioner has admitted his signature and execution of the disputed cheque/Ex.P1. Further, the petitioner has not approached the Court with clean hands and hence, the judgments of the Court below do not require any interference by this Court.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.

7. On a careful perusal of the records reveal that the petitioner/accused admitted the signature and execution of the cheque and the only defence taken by the revision petitioner/accused is that he had



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borrowed a sum of Rs.5 lakhs from the respondent/complainant and repaid the same.

8. It is a settled proposition of law that when once the execution of the cheque is admitted, Section 139 of N.I.Act mandates a presumption that the cheque was issued for discharge of legally enforceable debt or other liability. No doubt, the presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence, wherein the existence of a legally enforceable debt or liability can be contested. The standard of proof for rebutting the presumption is not as that of the complaint.

9. Thus, in the instant case the petitioner has admitted the execution of the cheque and the signature found in Ex.P1/ cheque and Ex.P5/receipt issued by the appellant acknowledging the issuance of Ex.P1 cheque, but the petitioner/accused did not establish the repayment of Ex.P1 cheque amount. No doubt, the accused can rebut the presumption by preponderance of



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probabilities and no need to let in any direct evidence. However, the petitioner has not rebutted the presumption in the manner known to law. Further, the complainant has clearly proved his case both factually and legally.

10. The scope of revision is very limited. The Trial Court and the Appellate Court had already appreciated and re-appreciated the entire evidence and also given findings and while exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, while deciding the revision, this Court has to see whether there is any perversity in appreciation of evidence by the Courts below.

11. On a combined reading of the entire materials and judgments of both the Courts below, this Court finds that the signature and execution of the cheque/Ex.P1 are not in dispute, however, the only defence taken by the petitioner/accused is that he repaid the said cheque amount, but the



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complainant has denied the same. When the petitioner/accused has taken such a specific defence of discharge, he has to substantiate his defence in the manner known to law. In this case, the petitioner/accused has not proved his defence by letting any oral and documentary evidence. Therefore, under such circumstances, this Court does not find any merit in the revision and there is no perversity in appreciation of evidence by the Courts below.

12. In view of the above, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

- 1.The Judicial Magistrate,
Fast Track Court,
Kallakurichi.
- 2.The I Additional District and Sessions Judge,
Tindivanam.



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P.VELMURUGAN, J.

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