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Crl.RC.Nos.1065 & 1066 of 2023 & Crl.M.P. Nos 8508 & 8513 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

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THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.RC.Nos.1065 & 1066 of 2023

&

Crl.M.P. Nos 8508 & 8513 of 2023

N. Sundram @ Ramalingam ...Petitioner in both the petitions

vs.

P. Rajasekaran ...Respondent in both the petitions

COMMON PRAYER: Criminal Revision Petitions filed under Section 397 & 401 of Criminal Procedure Code, 1973 praying to call for the entire records in Crl.A. Nos.64 and 65 of 2021 on the file of the XXII Additional City Civil Court, Allikulam, Chennai and set aside the order dated 25.08.2022, confirming the conviction and judgment dated 16.02.2021 in C.C. Nos.713 and 714 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court V, Saidapet, Chennai.

In both petitions

For Petitioner : M/s. R. Angalaparameswari

For Respondent : Mr. R. Gokul

for Mr. S.L. Sudarsanam



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COMMON ORDER

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The present Criminal Revision Petitions are filed against the judgment dated 25.08.2022 in Crl.A. Nos.64 and 65 of 2021 on the file of the XXII Additional City Civil Court, Allikulam, Chennai, confirming judgment dated 16.02.2021 in C.C. Nos.713 and 714 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court V, Saidapet, Chennai.

2. The respondent/complainant filed two private complaints under Section 200 Cr.P.C against the revision petitioner for an alleged offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as N.I. Act) in C.C. Nos. 713 and 714 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court V, Saidapet, Chennai.

3. The case of the respondent/complainant in nutshell is as follows:

- i. The revision petitioner/accused borrowed a sum of Rs.22 lakhs from the complainant for the purpose of developing his transport business and also handed over two cheques bearing Nos.126317 and 126318 dated 14.05.2014 (marked as Ex.P1 in the respective Calender cases) for a sum of Rs.11 lakhs each drawn on ING



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Vysya Bank, Erode Branch

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- ii. When the cheques were presented by the complainant through his banker, namely State Bank of India, CTS, Royapettah, on 14.05.2014, both the cheques were returned on 20.05.2014, vide Return Memo dated 20.05.2014 (Ex.P2) with an endorsement "Refer to the Drawer".
- iii. Thereafter the complainant issued a legal notice dated 26.05.2014 (Ex.P3).
- iv. Though the revision petitioner/accused received the said notice on 02.06.2014, he did not come forward to make good the payment due under both the cheques and therefore, the complainant filed a private complaint under Section 200 Cr.P.C., against the revision petitioner/accused under Section 138 of N.I. Act.

4. The trial court after summoning the accused, furnished the copies of records under Section 207 Cr.P.C and also questioned him. Since the accused denied the offence, the case was posted for trial.

5. In the trial court, the complainant examined himself and marked Ex.P1 to Ex.P4 in both the Calender cases. The circumstances appearing



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in evidence against the revision petitioner/accused were put to him and the revision petitioner denied of having committed any offence. The revision petitioner/accused examined himself and one another witness. However, no documentary evidence was adduced on his side.

6. The learned Metropolitan Magistrate, Fast Track Court-V, Saidapet, after considering the evidence adduced on both sides, vide his order dated 16.02.2021, convicted the present revision petitioner for the offence punishable under Section 138 of N.I. Act and sentenced him to undergo simple imprisonment for a period of six months and also to pay twice the cheque amount towards compensation under Section 357(3) Cr.P.C. to the complainant and in default to pay the said amount, to undergo simple imprisonment for a period of six months. It was further held that both the sentences shall run concurrently,

7. Aggrieved over the said judgment passed by the trial court judge, the revision petitioner/accused filed Criminal Appeals in C.A. Nos 64 and 65 of 2021 before the XXII Additional City Civil Court, Allikulam, Chennai. The learned XXII Additional Judge, City Civil Court, Allikulam, Chennai, after analysing the oral and documentary evidence



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adduced on both sides confirmed the findings of the trial court with regard to the conviction. However, the sentence of imprisonment of 6 months imposed against the accused was set aside and the revision petitioner/accused was directed to pay a fine of Rs.11,00,000/- in each appeal (total sum of Rs.22,00,000/- covering both the cheques amount) and in default to pay the said amount, to undergo Simple Imprisonment for a period of 3 months.

8. Now the present Criminal Revision Petition is filed by the accused.

9. Mr. R. Angalaparameswari, learned counsel for the Revision Petitioner contended that the accused did not borrow any amount from the complainant and that the cheques which were handed over by the revision petitioner were with regard to some other transaction and that the complainant had misused the same for the purpose of filing the present case. According to her, the present cheques were handed over way back in the year 2008 and that the complainant did not have wherewithal to finance Rs.22,00,000/- to the revision petitioner/acused and that the both the courts below did not take these aspects into



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consideration.

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10. Per contra, Mr. R. Gokul, learned counsel for the respondent contended that both the courts below after analysing the documentary evidence and also the defence taken by the revision petitioner/accused, had held that the accused is guilty of the offence under Section 138 of the N.I. Act.

11. At the outset it may be observed that the revision petitioner/accused did not deny his signature on the cheques and therefore the presumption under Sections 118 and 139 of the N.I. Act holds good. It is trite law that the defence of the accused is based on preponderance of probabilities of the case and not beyond any reasonable doubt. In the instant case, the revision petitioner/accused did not adduce any acceptable evidence to substantiate his contention that he did not receive any amount from the complainant. In fact Section 139 of the N.I. Act puts burden on the accused to prove his defence. The first appellate court in paragraph Nos.33, 34, 35, 40, 41 and 42 had observed thus.



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"33. In order to create doubt in the complainant's claims regarding existence of a legally enforceable debt, the accused has adopted primarily three fold defences, that the alleged loan amount being unaccounted cash of the complainant cannot be recovered i.e. source of fund could not be explained by the complainant; that no loan was advanced by the complainant to accused persons; and no liability of the accused persons towards complainant existed on the date on which impugned cheque was issued.

34. The learned counsel for the accused submitted that the loan amount given by the complainant allegedly to the accused is his unaccounted cash, and, therefore, cannot be recovered under a complaint filed under Section 138 of the Act. To support his proposition, learned counsel for the accused further submitted that advancing a loan amount of more than 20,000/- in cash is not permissible as per the provisions enshrined in Section 269 SS of Income Tax Act, 1961 (hereinafter referred as "ITA"). He argued that since, the instant alleged loan transaction involved a sum of Rs.22,00,000/-, therefore, it would be considered as illegal loan which cannot be recovered in a complaint filed under Section 138 of the Act.



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40. Now coming to the next contention that the loan transaction is not disclosed in income tax return of the complainant would amount to unaccounted income, and, therefore, could not be recovered under Section 138 of the Act. Admittedly the accused has not sent a reply notice for the statutory notice sent by the complainant, which fact is revealed from the cross examination of D.W.1 dated 11.12.2020. It is admitted by P.W.1 that the amount given to the accused was a hand loan. This fact is also admitted by P.W.1 in his cross examination. The said portion of the cross examination reiterated herein. "நான் கைமாற்றாக கொடுத்ததாக தான் வழக்கை அமைத்துள்ளேன் என்றால் சரிதான்" It is also admitted by P.W.1 in his cross examination that only because the accused borrowed the same sum towards hand loan, he did not demand interest. It is true that P.W.1 also admits that he has not specifically mentioned the date of borrowal by the accused in his complaint. On perusal of the sworn statement and the initial questioning of the accused, the accused was put to clear knowledge about the date of borrowal. The same forms part of the records. It is true that it is the duty of the complainant to mention the correct particulars about the date, time and place of borrowing. In the present case, the complainant has clearly stated in his sworn statement and



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evidence the date of borrowal. The learned counsel for the accused in his written arguments came up with a case that the complainant has in his proof affidavit stated that the accused borrowed hand loan on 12.05.2014. However on perusal of the proof affidavit of the complainant, no where it was mentioned so. However, it has been clearly stated in the sworn statement based on which the initial questioning was put to the accused. Therefore, the accused cannot take a defence that he has not been put to notice about the same. The learned trial court clearly discussed the same and finally came to a considered opinion.

41. Further the appellant/accused has very well by way of suggestion put to P.W.1 in cross examination admitted that the present transaction details have been shown in the income tax returns. The portion of the cross examination is extracted hereunder. "முந்தைய பரிவர்த்தனைகளை எனது வருமான வரி கணக்கில் காண்பிக்காத நான் கொடுக்காத பணத்தினை கொடுத்ததாக காண்பிப்பதற்க்காக இந்த வழக்கு தொகையை மட்டும் எனது வருமான வரி காண்பித்துள்ளேன் என்று சொன்னால் சரி அல்ல"

42. Therefore it is crystal clear that the accused has admitted the same and also is well aware of the fact that the complainant has revealed the same in his income tax statement. Though the accused let in evidence to show that there existed no legally enforceable debt and put up a



defence by disputing the handwriting under which the entries are made in Ex.P1 cheque, when once the signature of the cheques are admitted it is presumed that the accused has given authority to the complainant to fill up the same. It is true that on a perusal of the entries that seen in Ex.P1 cheque, it can be seen that the pen and ink used for putting the signature and other details are not one and the same. But as the accused admitted his signatures in the cheque, the accused is not entitled to take such a defence. The accused came forward stating that he has repaid the sum borrowed from the complainant during the year 2007. However, no material documents were produced to establish the same. In this regard the learned trial court considered the evidence of the accused that he used to borrow fromm the complainant many times and also used to repay the same. The learned trial judge found that the accused has not established as to whethr the said payments alleged to have been made by him pertains to the present transaction. The learned trial judge also considered the evidence of D.W.2 namely Rangasamy who came forward to depose that he lent a sum of Rs.5 lakhs to the accused to pay the complainant. The learned trial judge noted that D.W.1 has not spoken anything about the fact in whose presence he gave the said amount though it is suggested in P.W.1 cross that the said amount along with another four lakhs were given in the presence of Sandeeveran, Rajakrishnan,



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himself and Mani. Further D.W.2 also has not stated whether the accused gave the same to the complainant. Therefore on evaluation of the entire evidence, this court finds the version of the complainant is so probable and the contention of the accused is improbable and difficult to believe. The accused has not been successful in raising a probable defence.

12. The first appellate court had, by a well considered and well written order, found the revision petitioner/accused guilty of the offence under Section 138 of the N.I. Act and all the observations are perfectly in order and I do not find any reason to interfere with the same.

13. In the result,

- i. both the Criminal Revision Petitions are dismissed. No costs. Consequently, connected Criminal Miscellaneous Petitions are dismissed.
- ii. The judgment in Crl.A. Nos.64 and 65 of 2021 dated 25.08.2022 on the file of the XXII Additional City Civil Court, Allikulam, Chennai, is confirmed.
- iii. The judgment dated 16.02.2021 in C.C. Nos.713 and 714 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court V, Saidapet, Chennai, is confirmed with regard to the conviction.



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However, the sentence of imprisonment of 6 months imposed against the accused is set aside and modified as per the first appellate court's judgment.

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Index : yes/no

Speaking /Non speaking Order

To

1. The XXII Additional City Civil Court, Allikulam, Chennai.
2. The Metropolitan Magistrate, Fast Track Court V, Saidapet, Chennai.
3. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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