IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 20.04.2023)

(Pronounced on :25.04.2023)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.337 of 2019
and
Crl.M.P.No.4551 of 2019

A.Sundararajan ...Petitioner

.. Vs ..

V.C.R Finance
Rep.by its Managing Partner,
V.C.Ravichandran,
S/o.Chinnaiah,
Aged about 65 years
40-A, Kamarajar Nagar,
Chinnathirupathi,
Salem - 636 008. ...Respondent

PRAYER : Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to call for the order of the learned Judicial Magistrate - IV, Salem in S.T.C.No.971 of 2015 order dated 25.07.2017 and the order of Sessions Judge in Crl.A.No.101 of 2017 dated 27.11.2018 ought to be set aside and the petitioner be acquitted.

For petitioner : Mr.V.T.Narendiran

For Respondent : Mr.P.Jagadeesan

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ORDER

The convicted accused is the revision petitioner herein.

2. The matter arises under Section 138 of Negotiable Instruments Act,1881.

3. The revision petitioner has been charged and tried for the offence under Section 138-A of Negotiable Instrument Act,1881 the respondent filed complaint under Section 200 of Criminal Procedure Code,1973 before the learned Judicial Magistrate No.IV, Salem in S.T.C.No.971 of 2015.

4. The brief facts of the case filed by the complainant/respondent is that:

(a) The appellant borrowed a sum of Rs.6,00,000/- (Rupees Six Lakhs Only) on 18.02.2015 from the complainant as a hand loan for his urgent family and business expenses and agreed to pay the amount in with interest at the rate of 18%. As per the accused's request, the complainant had deducted 10 months interest i.e., Rs.90,000/- from the principal amount with a condition that the said Rs.90,000/- interest reduced will be adjusted for the 9th and 10th installment.

(b) Thus, the accused realized a sum of Rs.5,10,000/- by way of complainant Cheque No.565557 dated 18.02.2015 of Deutsche Bank, Salem as the same was honoured by the accused through bank process.

(c) To discharge the said debt and liability, the accused issued a cheque Nos.087331, 087332 and 087333 each for Rs.60,000/- dated 18.03.2015, 18.05.2015 respectively. All the said cheques were dishonoured when the complainant presented for collection into the complainant bank. In view of repeated demands, the appellant has volunteered to discharge the debt, he signed and issued the Ex.P1 cheque in favour of the complainant on 03.06.2015. The details of the cheque is cheque No.025463 for Rs.6,00,000/- and the same was drawn on State Bank of Hyderabad, Salem.

(d) As per the instruction of the petitioner/appellant, the respondent had presented the said cheque for collection into his bank Deutche Bank, Salem Branch, on 03.06.2015. But on 04.06.2015, the cheques was dishonoured as "Insufficient Funds". In pursuance of this, the respondent herein caused lawyer notice on 18.06.2015 and the same was returned on 29.06.2015 with an endorsement 'unclaimed' by the appellant. The petitioner/appellant neither paid the cheque amount nor replied.

(e) The above said complaint filed by the respondent is taken into the file of learned Judicial Magistrate No.IV, Salem in STC.No.971 of 2015. The Lower Court, in course of trial, recorded the evidence and has delivered the judgment on convicting the appellant to undergo Simple Imprisonment for one year and to pay a compensation of Rs.6,00,000/- to the respondent within one month and with a default, sentence to undergo another 2 months Simple Imprisonment on 25.07.2017.

5. Aggrieved against the said order of conviction passed by the learned Judicial Magistrate No.IV, Salem in S.T.C.No.971 of 2015, the convicted accused has preferred Crl.A.No.101 of 2017 before the learned learned IIIrd Additional District and Sessions Judge and by an order dated 27.11.2018, the appeal was dismissed and hence the revision.

6. Heard the learned counsel appearing for the revision petitioner and the respondent.

7. On perusal of the lower Court records and the evidence of P.W.1 complainant, Exs.P1 and P5 were marked and on behalf of the

defense side, no witness or oral witness has been adduced.

8. The accused had received Rs.5,10,000/- on 18.02.2015 after deducting interest payable for debt and issued Ex.P1 cheque dated 03.06.2015. When he presented Ex.P1 cheque in his account for collection on 03.06.2015, it was returned with an endorsement of 'insufficient fund'. He had issued a statutory notice under Section 138(b) of N.I Act on 17.06.2015. Since the accused refused to receive the notice, it was returned to the complainant. After that, the accused neither the paid the cheque amount nor issued any reply notice. In this case, the case cheque has been marked as Ex.P1. The accused herein has not denied the signature found in Ex.P1 cheque and the fact that it was issued by him.

9. When the accused has admitted his signatures found in the Ex.P1 cheque and issuance of same under Section 139 of N.I. Act, it has to be presumed that a cheque was issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption.

10. It is the case of the defense that the case cheques were given to the complainant for security purpose and after repayment of debt, the complainant had not returned the same to the accused and filed this case using the said cheques against him. This Court carefully considering the said defense put forth by the defense counsel during the course of cross examination of P.W.1.

11. The submissions made by the learned counsel for the petitioner is that at the time of borrowal of Rs.6 lakhs from him, he has already deducted Rs.90,000/- towards the last payment and Rs.5,10,000/- alone was granted by him. In that even, he has paid in 3 installments and even before the payment, he has presented the cheque for the entire transaction. When the similar question was put to him in the cross examination of P.W.1, the same was emphatically denied.

12. To the dismay, the accused has neither entered any witness box to present this case nor elicited during the cross examination of P.W.1 by way of suggestions.

13.During the cross examination of P.W.1, it is seen that, what was projected is that he had remitted 10 cheques to the tune of Rs.60,000/- each and the same was encashed by the complainant. However, the same was denied by P.W.1 (complainant). No steps had been taken by the revision petitioner/accused to probablize such a suggestion that the entire amount has been paid, that is by producing his bank entry to show the alleged transaction as projected during the cross examination of P.W.1 as stated supra. Hence, both the Courts below have rightly come to the conclusion that, the defendant has failed to probablize his suggestive case and also failed to rebut the presumption under Section 139 of the N.I.Act.

14. The lower Appellate Court has also given an independent finding to the effect that, even during the questioning under Section 313 of the Criminal Procedure Code, the revision petitioner/accused has not stated anything or given any explanation as to associate the cheque and the cheque amount with him. The signature in the cheque is admitted.

15. Though, during the argument, it is contended that it is given for a security purpose, however it has not been probablized in the manner known to law as stated supra. Hence the lower Appellate Court has given a independent finding that, as the petitioner as proved that there is legally enforceble debt and signature in the petition cheque being admitted by the accused, the complainant is entitled for presumption under the N.I.Act and the revision petitioner/accused has failed to probablize the suggestive case by letting in any positive evidence or elicited anything from the cross examination and therefore the lower appellate Court has rightly come to the conclusion that the accused has failed to rebut the presumption under Section 139 of N.I.Act.

16. It has been further held that the respondent/complainant has proved his case by stating that the accused borrowed a sum of Rs.6 lakhs and subsequently issued Ex.P1 cheque and the same was dishonoured and accordingly laid the conviction and the sentence and also awarded compensation of the cheque amount. Hence, I do not find any irregularity or illegality in the orders passed by the Courts

below and does not warrant any interference.

17. Accordingly, this Criminal Revision Petition is dismissed. Consequently, connected Crl.M.P is closed.

25.04.2023

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RMT.TEEKAA RAMAN,J.,

After delivering the judgment, Mr.V.T.Narendiran, learned counsel appearing for the revision petitioner has submitted that time may be granted for settling the issue.

2. In view of the submissions made by the learned counsel for the revision petitioner, the sentence as confirmed by this Court shall not be executed on or before 31.05.2023 and liberty is given to consent of the other party for settling the issue.

25.04.2023

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Internet:Yes/No
Speaking Order:Yes/No
Neutral Citation: Yes/No

To

1. The Judicial Magistrate - IV, Salem
2. The III Additional District Sessions Judge, Salem.

RMT.TEEKAA RAMAN, J.

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Pre-Delivery order in
Crl.R.C.No.337 of 2019 and
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