IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2023

PRONOUNCED ON: 20.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.Nos.295 & 297 of 2021

Uthirapathy	...	Petitioner in both Crl.R.Cs.
	/vs/	
Periyasamy	...	Respondent in both Crl.R.Cs.

PRAYER : Criminal Revision Cases have been filed under Sections 397 r/w 401 of Code of Criminal Procedure to set aside the order of convicting the petitioner dated 03.03.2021 passed by the learned III Additional District Sessions Judge, Cuddalore at Virudhachalam in C.A.Nos.14 & 15 of 2018 dated 03.03.2021 confirming the judgment passed dated 26.02.2018 by the Judicial Magistrate No.I, Virudhachalam, Cuddalore District in STC Nos.210 & 242 of 2015.

For Petitioner in both Crl.R.Cs.	...	Mr.M.Senthilkumar
For Respondent in both Crl.R.Cs.	...	Mr.T.Gandhi

COMMON ORDER

Challenging the orders of conviction dated 03.03.2021 passed in C.A.Nos.14 & 15 of 2018 by the learned III Additional District Sessions Judge, Cuddalore at Vriddhachalam, confirming the judgment dated 26.02.2018 passed in STC Nos.210 & 242 of 2015 by the Judicial Magistrate No.I, Vriddhachalam, Cuddalore District, these present criminal revision cases have been filed.

2.The fact of the case is that the revision petitioner is an accused and the respondent is the complainant in STC Nos.210 & 242 of 2015 on the file of the Judicial Magistrate No.I, Vriddhachalam. The accused and the complainant are friends. The accused requested the complainant on 01.04.2023 to lend a sum of Rs.7,00,000/- to meet educational expenses of his son and for business development. Since the complainant was not having that much of amount, he requested his brother Ponnusamy to lend a sum of Rs.7,00,000/- to the accused, so that, on 14.04.2013 Ponnusamy gave a sum of Rs.7,00,000/- to the accused at the house of one Tamilselvi, a daughter of the complainant. In respect of the same, the accused agreed to repay the amount with 12% interest and executed a promissory note in favour of Ponnusamy, again the accused demanded further a sum of Rs.6,00,000/- from the complainant. The complainant gave a sum of Rs.6,00,000/- to the accused on 16.05.2013, for that, the accused executed a promissory note in favour of the complainant, again the accused demanded a sum of Rs.2,00,000/- to meet his son's educational Expenses. The complainant through his daughter Tamilselvi advanced a sum of Rs.2,00,000/- to the accused on 23.08.2013, for that, the accused executed promissory note in favour of Tamilselvi. The accused had not repaid the abovesaid borrowed sum with interest to the complainant. While that being so, the accused lodged a complaint before the Deputy Superintendent of Police, Virudhachalam on 01.08.2014 for granting six months time for repaying the borrowed amount. Thereafter, they arrived at a compromise and agreed to repay the amount of Rs.20,00,000/-. In pursuance of settlement, the accused gave ICICI Bank two cheques dated 26.12.2014 & 05.01.2015 bearing Cheque Nos.929717 and 929719 for a sum of

Rs.10,00,000/- each. The complainant presented the cheques bearing Nos.929717 and 929719 dated 26.12.2014 and 05.01.2015 through his bank and the same were returned as "Account closed." Hence, the complainant filed complaints in S.T.C.No.210 of 2015 and S.T.C.No.242 of 2015 before the Judicial Magistrate No.I, Vridhachalam, for the offence under Section 138 N.I.Act for the dishonour of cheques bearing Nos.929717 dated 26.12.2014 and 929719 dated 05.01.2015 respectively. After trial, the trial Court found guilty in both the cases and convicted the accused for the offence punishable under Section 138 N.I.Act and imposed sentence to undergo simple imprisonment for a period of one year and in addition a compensation of Rs.20,00,000/- is awarded to the complainant to be paid by the accused within a period of three months in default to undergo simple imprisonment for a period of one Month.

3.Aggrieved by the judgment of trial Court in STC Nos.210 of 2015 and S.T.C.No.242 of 2015, the accused preferred the criminal appeal Nos.14 & 15 of 2018 respectively before the III Additional District and Sessions Judge, Cuddalore at Vridhachalam. The appellate Court, after reappraising the evidence on record, confirmed the judgment of the trial Court and dismissed the criminal appeals. Aggrieved by these findings, the accused preferred the present criminal revision cases before this Court.

4.The learned counsel for the petitioner/accused submitted that the trial Court and the appellate Court had not properly considered the evidence on record with regard to lending of money and there are material contradictions in the evidence. Further, the trial Court and the appellate Court failed to consider the fact that since the disputed cheques had been issued to the complainant only on the compulsion of DSP, Virudhachalam, the cheques are not valid. Further, the appellate Court had taken into consideration the compromise memo dated 20.08.2020 filed by the parties, in which, it is stated that the accused is ready to pay the amount of Rs.24,00,000/-.

5.Further, the learned counsel for the petitioner submitted that while granting suspension of sentence, this Court directed the accused to deposit a sum of Rs.2,00,000/- each to the credit of S.T.C.Nos.210 of 2015 &

S.T.C.No.242 of 2015 on the file of the learned Judicial Magistrate No.I, Virudhachalam, Cuddalore District. As per the direction of this Court dated 06.05.2021, the accused deposited a sum of Rs.2,00,000/- in each cases and he has no objection to withdraw the same. In this regard, the complainant filed the petitions to permit the complainant to withdraw the deposited amount, which was allowed by this Court on 29.06.2022 & 28.06.2022 respectively. Therefore, he pleaded to set aside the judgment of the trial Court and the first appellate Court and to allow the criminal revision cases.

6.The learned counsel for the respondent/complainant would support the judgment of the trial Court and the appellate Court and submit that the accused did not reply to the legal notice issued by the complainant and did not deny the details of two cheques, which were given in the legal notice. The cheques were issued in order to discharge the legal enforceable debt and the signatures in the cheques were admitted by the accused. The trial Court and the appellate Court rightly appreciated the evidence by invoking the presumption under Section 138 of N.I. Act. Therefore, there is no reason to interfere with the well reasoned findings of the appellate Court and found upon due consideration of all the relevant factors of the case and thus, pleaded to dismiss the criminal revision cases.

7.I have considered the matters in the light of the submissions made by the learned counsel for the petitioner/accused as well as the learned counsel for the respondent/complainant.

8.The case of the complainant is that the accused and the complainant are friends. To meet the personal expenses of the accused, initially the accused demanded a sum of Rs.7,00,000/- on 01.04.2013 from the complainant. Since he was not having that much of money at that time, he requested his brother Ponnusamy to pay that amount, on his request, he paid the amount of Rs.7,00,000/- on 14.04.2013. Again, the accused demanded a sum of Rs.6,00,000/- that amount also paid by the complainant to the accused on 16.05.2013. Thereafter, Rs.2,00,000/- was demanded by the accused, which was also paid by the complainant on 23.08.2013 through his daughter. All these amounts were not repaid by the accused as agreed by him. While that being so, the accused lodged a complaint before the DSP, Virdhuchalam for granting six months time but the DSP granted five months time for repayment, for which, the accused also agreed to repay the same. Thereafter, the matter was compromised between them and the accused agreed to repay the amount of Rs.20,00,000/-. In pursuance of that settlement, the accused issued two cheques drawn on ICICI Bank bearing cheque No.929717 dated 26.12.2014 for a sum of Rs.10,00,000/- and another cheque bearing No.929719 dated 05.01.2015 for a sum of Rs.10,00,000/-.

9.Before the trial Court, the complainant deposed clearly about the lending of money to the accused on different dates, for that, for partial discharge of debts, these disputed cheques dated 26.12.2014 & 05.01.2015 were given by the accused. Further, in these cases, the accused has not disputed his signatures in the cheques and borrowing of amount by the accused and the money transaction in S.T.C.No.210 of 2015 is evidenced by the evidence of Periyasamy (PW1), Ponnusamy (PW2), Anbazhagan (PW3), Karthick (PW4) and Gopikrishna (PW5) and in S.T.C.No.242 of

2015 Periyasamy (PW1), Ponnusamy (PW2), Anbazhagan (PW3) and Ravishankar (PW4). Further, the cheques were returned for the reason of "account closed" which is evidenced by the memo issued by the bank dated 30.12.2014 (Ex.P2 in S.T.C.No.210 of 2015) and the return memo issued by the bank dated 11.02.2015 (Ex.P3 in S.T.C.No.242 of 2015). Further, the transaction is supported by the promissory note executed by the accused dated 14.04.2013, 16.05.2013 and 23.08.2013 (Ex.P3, Ex.P4 & Ex.P5 in S.T.C.No.210 of 2015) and in the statutory legal notice dated 29.01.2015 Ex.P6 (in S.T.C.No.210 of 2015) and Statutory Notice dated 06.03.2015 Ex.P4 (in S.T.C.No.242 of 2015), the complainant narrated the transaction between him and the accused and the accused did not repay the borrowed sum and he argued before the Court that the cheques were issued only on the compulsion of DSP, Vridhachalam, which were not probabilised by the accused by sufficient evidence before the trial Court.

10.Once the accused had admitted his signature on the cheques, the trial Court ought to have presumed under Section 139 of N.I.Act that the cheques were issued as consideration for legal enforceable debt. The trial

Court, after examining the record, found that the accused had admitted his signature on the cheques and rightly drew the presumption envisaged by Section 139 of N.I. Act and after having drawn the presumption, found several factors in favour of the complainant and observed inter-alia that there was no evidence to show that the cheques were issued under the compulsion of DSP and the accused failed to probabilise his defence and rebut the presumption raised under Section 139 N.I. Act. Further, the evidence on record reflects the transaction in question is true.

11.In such circumstances, the principles stated by the Supreme Court in ***Rangappa V. Sri Mohan (2010) 11 SCC 441*** may be reiterated and the principles relating to presumptions under Sections 118 and 139 of N.I. Act and rebuttal thereof in the following:

> ***"26. In the light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on***

the correctness of the decision in that case since it is based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttal presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.

12.Further, on the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non- existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist.

13.Further, the Hon'ble Supreme Court has, time and again, emphasized that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Section 118 and 139 of the NIAct. Further stated the principles in the case of Kumar Exports case as follows:

"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on

record such facts and circumstances, upon consideration of

which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139."

14.Further, on perusal of records, it is noticed that during the pendency of the criminal appeals, both the parties complainant and the accused before the III Additional District and Sessions Judge, Cuddalore, at Virudhachalam, filed a joint compromise memo dated 20.08.2020 stated that the accused agreed to pay a sum of Rs.24,00,000/- to the complainant and also paid a sum of Rs.1,00,000/- to the complainant on the date itself and the complainant also received the same. In such circumstances, there is no bonofide on the part of the accused now denied the transaction.

15.In view of the above, I find no reason to interfere with the findings of the trial Court as well as the first appellate Court and no merit in these criminal revision cases. Hence, the criminal revision cases are dismissed.

Index : Yes/No
Internet : Yes/No
sms

20.04.2023

To

1. The learned III Additional District Sessions Judge,
   Cuddalore at Virudhachalam.

2. The Judicial Magistrate No.I,
   Virudhachalam, Cuddalore District.

V.SIVAGNANAM ,J.

sms

Pre-delivery order made in
Crl.R.C.Nos.295 & 297 of 2021

20.04.2023