



Crl.R.C. No.1282 of 2023 & Crl. M.P. No.10456 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM

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

Crl.R.C.No. 1282 of 2023 &

Crl.M.P. No.10456 of 2023

Selvaraj

...Petitioner

Vs.

Rajendran

...Respondent

Prayer : Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C. against the Judgment dated 15.02.2022 in C.A. No.34/2021 passed by the Principal Sessions Judge, Villupuram, confirming the Judgment dated 08.10.2021 in STC No.422 of 2020 passed by the Judicial Magistrate-I, Villupuram.

For Petitioner : Mr. R. Rajprasanna

For Respondent : Mr.V.S.Sivasundaram

ORDER

The revision petitioner, the accused in STC No.422/2020 on the file of the Judicial Magistrate I, Villupuram, and the appellant in

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C.A.No.34/2021 on the file of the Principal Sessions Judge, Villupuram, has filed the present criminal revision. The accused was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act) and sentenced to undergo simple imprisonment for one year and also to pay a sum of Rs.15,000/- towards compensation within two months from the date of the order, i.e, 08.10.2021, by the learned Judicial Magistrate I, Villupuram. On an appeal by the accused, the said conviction and sentence was confirmed by the Principal Sessions Judge, Villupuram, vide judgment and order dated 15.02.2022.

2. The brief facts of the case of the complainant are as follows:

- i. The complainant is a whole sale cement merchant in Villupuram while the accused is a retailer running a proprietorship concern in the name and style of Poovayee Amman Agency in Kallakuruchi.
- ii. During the course of business transaction between the complainant and the accused, the accused has to pay a sum of Rs.15,02,140/- till the year 2018 and in order to discharge the said liability, the accused issued a cheque (Ex.P.2) dated 14.09.2020 for a sum of



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- iii. When the complainant presented the cheque for realisation through his banker, viz., Tamil Nadu Mercantile Bank, Villupuram Branch, it was returned for the reason "Exceeds Arrangements", as is seen from the cheque return memo (Ex.P3).
- iv. Thereafter, the complainant issued a statutory notice dated 24.09.2020 (Ex.P4) to the accused. The accused, though received the said notice, as is evidenced by the postal acknowledgment card (Ex.P5), neither came forward to make good the amount nor sent any reply.
- v. Therefore, the complainant filed a private complaint under Section 200Cr.P.C against the accused for the offence punishable under Section 138 of NI Act before the Judicial Magistrate I, Villupuram.
- vi. The trial court, on receipt of the complaint took cognizance of the offence after recording the sworn statement of the complainant and issued summons to the accused under Section 204 Cr.P.C. On appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C and the accused was also questioned



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with regard to the substance of accusation made against him.

Since the accused pleaded not guilty, the case was posted for trial.

vii.The complainant examined himself as P.W.1 and the accused cross examined him. Thereafter the accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, for which the accused denied of having committed any offence. However, the accused did not adduce any oral/documentary evidence on his side.

viii.The learned trial court judge, after analysing the evidence on record, found the accused guilty of the offence punishable under Section 138 of NI Act and convicted and sentenced him as stated above on the following grounds:

- 1) The complainant (P.W.1) had proved that he had business transaction with the accused and during the course of transaction the accused was liable to pay a sum of Rs.15,02,140/-, for which he issued a cheque (Ex.P2).
- 2) The accused did not issue any reply to the notice sent by the complainant.



3) Mere suggestion to P.W. 1 during the course of cross examination that the cheque was issued for security purpose cannot be accepted. Moreover the accused had not disputed his signature on the cheque.

ix. Aggrieved over the same, the present revision petitioner/accused filed an appeal before the Principal Sessions Court, Villupuram. The learned Principal Sessions Court, Villupuram, dismissed the said appeal vide her judgment dated 15.02.2022 by confirming the judgment of the trial court on the following grounds:

1) Though it is true that the accused need not get into witness box to rebut the presumption under Section 139 of NI Act, mere suggestion to P.W.1, that the impugned cheque in question was issued only for security purpose, during the course of cross examination cannot absolve the liability of the accused in the absence of any evidence.

2) The accused had not denied his liability by issuing a reply notice and he cross examined P.W.1 only after he was questioned under 313(1) Cr.P.C by way of filing a petition



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under Section 311 Cr.P.C.

3) The complainant had proved that there is an existing legally enforceable debt and the accused had not rebutted the presumption under Section 139 of NI Act by adducing any acceptable evidence.

- x. Aggrieved over the same, the present Criminal Revision is filed by the revision petitioner/accused.

3. Mr. R. Rajprasanna, learned counsel for the revision petitioner contended that the complainant did not adduce any Account Books maintained during the course of business to show that there is a legally enforceable debt as against the accused and that the accused by way of questioning this, had successfully rebutted the presumption under Section 139 of NI Act. In support of his contentions, he relied on the following decisions.

- i. A.S. Duraisami Chettiar Sons vs. S. Rathnaswami Gounder reported in AIR 1992 Mad 132.
- ii. Basalingappa Vs. Mudibasappa reported in (2019) 5 SCC 418



iii. Dr.K.K. Soni vs. Shri Mukesh Kumar reported in 2013 (2) DCR

663.

He also contended that as per Section 3 of the Indian Evidence Act, a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

4. Per contra Mr.V.S.Sivasundaram, learned counsel for the respondent contended that the present revision petitioner had filed the Criminal Revision against the concurrent findings of facts by both the courts below and that both the courts properly analysed the evidence on record, convicted and sentenced the accused and thus no interference is called for by this court.

5. At the outset it may be observed that the revision petitioner/accused did not deny the fact that he had business transactions with the complainant. His only contention is that the cheque was issued



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for security purpose to the complainant and that the said cheque was misused by the complainant. According to him, the complainant had not proved the legally enforceable debt as against him by adducing Books of Accounts. At this juncture it is relevant to point out that the accused has not issued any reply notice to the statutory notice (Ex.P4) issued by the complainant. It is not the case of the accused that he did not receive the notice issued by the complainant. A perusal of the postal acknowledgment card (Ex.P5) clearly shows that the accused was actually in receipt of the statutory notice (Ex.P4). The contention of the accused that the impugned cheque was given only as a security to the complainant, had not been substantiated by way of adducing acceptable evidence and this aspect has been gone into by both the courts below. It is appropriate to note that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C cannot act as a second appellate court and thus cannot interfere with the findings of facts recorded by both the courts below.



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6. Now the contention of the counsel for the revision petitioner is that the complainant has not adduced his Account Books to show the existence of liability. It is clear that a bare denial of existence of debt would not serve any purpose to the accused and 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 the prudent man would under the circumstances of the case, act upon the plea that they did not exist. It is settled law that where the fact of signature on the cheque is acknowledged, a presumption has to be raised that the cheque pertained to a legally enforceable debt or liability, however, this presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence.

7. The contention of the learned counsel for the revision petitioner is that the accused had rebutted the presumption by way of



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cross examining P.W.1. However, as already observed the accused had admitted that he had business transactions with the complainant and during the course of said business transaction, he had issued a cheque to the complainant.

8. The decision in *A.S. Duraisami Chettiar Sons vs. S.Rathnaswami Gounder* (cited supra) may not apply to the facts of the present case as the said case was a civil suit based on Hundi. The defendant in the said suit had filed a written statement contending that the hundi was not supported by consideration. In fact the defendant took summons even to the Auditor of the plaintiff's company. In such circumstances it was held that an adverse inference has to be drawn against the plaintiff for non production of Account Books. The facts of the present case are totally different as in the instant case, the accused has not denied his liability by issuing a reply notice to the accused and he did not also examine himself.



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9. Similarly the decision in ***Basalingappa Vs. Mudibasappa*** (cited supra) would not apply to the facts of the present case because in the said decision it was made clear that the bare denial of the existence of debt without sufficient proof cannot be construed that the accused had rebutted the presumption under Section 139 of NI Act.

10. In the decision in ***Dr.K.K. Soni vs. Shri Mukesh Kumar (cited supra)***, the accused was able to prove that there was no legally enforceable debt as against him. In the said decision, the case of the complainant was that he was running a nursing home for 30 years and the accused, purporting to sell his house, entered into an agreement with the complainant for which a sum of Rs.3,00,000/- was paid to the accused in three instalments. But later on, it was revealed that there was some loan on the house to be purchased by the complainant and the complainant therefore rescinded the contract. In such circumstances the question whether the agreement was actually executed and if it was executed whether it was supported by consideration were all relevant facts which should be proved only by the complainant in order to establish the factum



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of legally enforceable debt. The facts of the present case are entirely different and therefore this decision also would not be of any help to the present revision petitioner.

11. Both the courts below had actually analysed the evidence on record threadbare and had come to a conclusion that the accused is guilty of the offence under Section 138 of NI Act and I do not see any reason to interfere with the same.

12. As regards the quantum of punishment, both the courts below had sentenced the accused to undergo simple imprisonment for a period of one year, which cannot be said to be disproportionate to the offence committed by the accused.

13. In the result,

- i. the Criminal Revision Case is dismissed. Consequently connected miscellaneous petition is closed.



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ii. the Judgment dated 15.02.2022 in C.A. No.34/2021 passed by the Principal Sessions Judge, Villupuram, and the Judgment dated 08.10.2021 in STC No.422 of 2020 passed by the Judicial Magistrate-I, Villupuram, are confirmed.

iii. The petitioner is directed to surrender before the Judicial Magistrate-I, Villupuram, within 15 days from the date of receipt of a copy of this order, failing which, the trial court judge is directed to secure the presence of the accused for serving the sentence imposed on him.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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To

1. Judicial Magistrate-I, Villupuram
2. Principal Sessions Judge, Villupuram.

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