IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

Crl.RC.No.1156 of 2023
&
Crl.MP. No. 9064 of 2023

M. Nagarajan ...Petitioner

vs.

M. Navarajan ...Respondent

PRAYER: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code, 1973 against the judgement of dismissal in C.A. No.350 of 2017 dated 28.04.2023 by the I Additional (TADA) Sessions Judge, City Civil Court, Chennai, as well as the judgment of conviction and compensation passed in C.C. No.4045 of 2013 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, dated 12.10.2017.

For Petitioner : Mr.Aakash Johannes Russell

ORDER

The present Criminal Revision Petition is filed against the judgement dated 28.04.2023 in C.A. No.350 of 2017 passed by the I Additional (TADA) Sessions Judge, City Civil Court, Chennai, confirming the judgment dated 12.10.2017 passed in C.C.No.4045 of 2013 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

2. This Criminal Revision Petition is listed today before this Court for admission and the same is decided at the admission stage.

3. The revision petitioner is the accused in C.C. No.4045/2013 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. The respondent/complainant filed the above case under Section138 of the Negotiable Instruments Act (hereinafter referred to as NI Act), against the present revision petitioner/accused.

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

i. The accused is the elder brother of the complainant and he borrowed a sum of Rs.1,50,000/- for his business purpose and promised to repay the same to the latter within 3 months.

ii. When the complainant approached the accused on 03.07.2013, the revision petitioner/accused expressed his inability to repay the amount and issued a post dated cheque (Ex.P1) bearing No.391524 dated 02.08.2013 for Rs.1,50,000/- drawn on Punjab National Bank, Thiru-vi-ka Nagar Branch, Chennai, in favour of the complainant.

iii. When the cheque was presented for collection by the complainant, through his banker, namely State Bank of India, Sowcarpet Branch, Chennai, on 02.08.2013, the same was returned by the bank, vide bank return memo dated 06.08.2013 (Ex.P2), for the reason "Account closed".

iv. Thereafter the complainant issued a legal notice dated 19.08.2013 (Ex.P3) and the same was received by the accused as is seen from the postal acknowledgment card (Ex.P4).

v. Subsequently, the accused issued a reply notice dated 24.08.2013 (Ex.P5) to the complainant, which according to the complainant contained false allegations. The respondent/complainant therefore filed the case against the accused under Section 138 of N.I Act.

5. The learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai, after receipt of the complaint recorded the sworn statement of the complainant and also on perusal of the documents found that there was a prima facie case against the accused and took cognizance of offence under Section 138 of N.I Act. On appearance of the accused, the copies of the case records were furnished to him under Section 207 Cr.P.C., and when the accused was questioned, he pleaded not guilty and

therefore, the case was posted for trial.

6. In the trial court, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P7. After the closure of the complainant's side witness, the accused was questioned under Section 313 Cr.PC with regard to the circumstances appearing in evidence against him. The accused pleaded not guilty. He examined himself apart from examining two other witnesses and marked Ex.D1 to Ex.D4.

7. After analysing the oral and documentary evidence adduced on both sides, the learned trial court judge held that the accused is guilty of the offence punishable under Section 138 of the N.I Act and sentenced him to undergo simple imprisonment for a period of six months and also to pay a compensation of Rs.1,50,000/- to the respondent/complainant under Section 357(3) Cr.P.C within one month and in default to pay the compensation amount, to undergo Simple Imprisonment for a period of two months, vide his judgment dated 12.10.2017.

8. Aggrieved over this, the accused filed an appeal in Criminal Appeal No.350 of 2017 before the I Additional (TADA) Sessions Judge, City Civil Court, Chennai. The learned I Additional (Tada) Sessions Judge, City Civil Court, Chennai, after considering the oral and

documentary evidence adduced on both sides confirmed the findings recorded by the trial court and further directed the trial court to take steps to secure the accused to undergo the remaining period of sentence. In the first appellate court the accused filed four more documents in Crl.M.P. No.2454/2019 and since the learned I Additional (Tada) Sessions Judge, found that those documents are not relevant to the facts of present case, dismissed the said petition.

9. Now the present Criminal Revision Petition is filed by the accused in CC No. 4045/2013.

10. Mr.Aakash Johannes Russel, learned counsel for the Revision Petitioner contended that though in the chief examination the complainant had stated that the accused handed over the post dated cheque dated 02.08.2013, during the course of cross examination he had deposed that the accused handed over the cheque on the date of borrowal of a sum of Rs.1,50,000/- from him. This aspect was not at all considered by the courts below. His another contention is that there was a transaction between him and Murugesan, who was examined as D.W.1, and that he actually borrowed a sum of Rs.10,00,000/- from the said Murugesan and one of the cheques issued by the accused in favour of Murugesan found place in the notice sent by the said Murugesan. Yet

another contention of the learned counsel for the revision petitioner is that on the date of alleged transaction between the accused and the complainant i.e. on 06.03.2013 the former was out of station. He therefore prayed that the accused has got to be acquitted in the instant case.

11. It is pertinent to point out that the accused has not at all denied his signature on the cheque Ex.P1 and receipt of notice from the complainant. The accused has issued Ex.P1 cheque from the account which was already closed by him. The bank manager (D.W.2) had deposed that the account from which the impugned cheque was issued was closed on 09.07.2010, as is seen from Ex.D2, and that since the account was closed by the bank itself on the ground of "no transaction", the original cheques should have been in the hands of the accused. The specific contention of the accused is that he was not in station on 06.03.2013. However, he did not adduce any acceptable oral/documentary evidence to substantiate his contention in this regard. Moreover, it is the case of the complainant that the accused issued post dated cheque dated 02.08.2013. It is also important to note down that the accused at the time of initial questioning did not state that he issued the impugned cheque only in favour of Murugesan and not in favour of the

present complainant. Even when the accused was questioned under Section 313 Cr.P.C. he did not whisper that the impugned cheque was issued to one Murugesan. A perusal of questioning under Section 313 Cr.P.C. shows that it is a simple denial. Though in the reply notice, there is a mention that the impugned cheque was issued in favour of Murugesan, the same was not stated in 313 Cr.P.C. by the accused as already observed. Moreover, the said Murugesan who was examined on the side of the accused could not even state the address of the accused. But he stated that he lent a sum of Rs.10,00,000/- to the accused. Both the courts below had rightly disbelieved the evidence of the said Murugesan (D.W.1). The first appellate court in paragraph Nos.18, 19 and 20 had observed thus:

> *"18. The appellant has taken the stand of defence that he is out of station on 06.03.2013 to disprove that he borrowed the amount from the respondent. But he has not denied the issuance of the cheque, his signature on the cheque. He has also not stated how his signed cheque went to the hand of the respondent. Though he pleaded to have issued the cheques to D.W.1 only, D.W.1 has deposed that he handed over the cheques and pro-note through the respondent after receiving his loan amount from the appellant. But no explanation was offered either by D.W.1*

or D.W.3 on what amount was received by D.W.1 from D.W.3, what is the necessity of handing over the cheques and pro-note through the respondent/complainant herein. The defense taken by the appellant that he was not in the station on 06.03.2013 was also disproved by the appellant herein before the trial court through valid documents. A bare perusal of the signature of the appellant in the disputed cheque and the settlement deed produced by the appellant would go to show that there is no difference in the signatures found in both documents. Further, the appellant has failed to deny his signature on the cheque, now cannot turn around and took a stand that the disputed cheque was handed over to D.W.1 and not to the complainant, as the cheque was issued in favour of the respondent/complainant. Thus it is clear that the appellant has issued the disputed cheque only in favour of the respondent/complainant.

19. It is proved that the appellant has issued the disputed cheque in favour of the respondent for a sum of Rs.1,50,000/-. The respondent has stated that the appellant borrowed the same sum and issued the disputed cheque. But the appellant has not come forward to disprove the above fact by stating the reason why he issued the disputed cheque in favour of the respondent, on which condition, under which circumstances, how this filled, signed cheque went into the hands of the complainant, etc. The appellant *has not come forward with any clear explanation for the above facts and left the matter under ambiguity. The respondent has proved the case by putting forth his oral and documentary evidence beyond doubt and has filed the present case before the filing of a civil suit for partition filed by the appellant. The above facts would amply prove the facts as alleged by the complainant.*

20. For the foregoing reasons, this court is of the considered view that the trial court has rightly concluded that the accused did not rebut the presumption under Section 139 of N.I. Act. There is no ground made out by the appellant/accused to interfere with the judgment of conviction pronounced by the trial court. The judgment of the trial court is well-reasoned and there is nothing to interfere with the finding of the trial court. The trial court is justified in convicting and sentencing the accused. These points are answered accordingly.

12. The above observations of the first appellate court are based on well laid principles of law and this Court does not see any reason to interfere with the same in the present Criminal Revision Petition.

13. In the result,

i. the Criminal Revision Petition is dismissed. No costs. Consequently, connected Criminal Miscellaneous Petition is dismissed.

ii. The judgement dated 28.04.2023 passed by the I Additional Sessions Judge, City Civil Court, Chennai in C.A. No.350 of 2017 and judgment dated 12.10.2017 in C.C. No.4045 of 2013 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, are confirmed.

iii. The Revision petitioner in Crl.RC. No.1156 of 2023 (accused in C.C. No. 4045/2013), shall surrender before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, within 15 days from the date of receipt of copy of the order, failing which, the Trial Court shall take steps to secure him for undergoing the sentence.

03.07.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

1. The I Additional (TADA) Sessions Judge, City Civil Court, Chennai.

2. The Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

3. The Section Officer, Criminal Section, High Court, Madras.

R.HEMALATHA, J.

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