



WEB COPY



Crl.R.C.No.1337 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1337 of 2017

V.S.Gunaseelan

... Petitioner

vs.

K.Moorthi

... Respondent

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the entire records in respect of the judgment rendered by the learned Additional Sessions Judge, Magalir Needhimandram/Fast Track Court, Erode dated 31.08.2017 in C.A.No.119 of 2017 by confirming the judgment rendered by the learned Judicial Magistrate No.I, Gopichettipalayam in C.C.No.2 of 2008 dated 08.05.2017 and set aside the same and acquit the petitioner.

For Petitioner

: Mr.D.Rajagopal

For Respondent

: M/s.H.Kavitha for
S.Kaithamalai Kumaran



Crl.R.C.No.1337 of 2017

WEB COPY

ORDER

This Criminal Revision case has been filed against the judgment and order passed in Crl.A.No.119 of 2017 by the learned Additional Sessions Judge, Magalir Needhimandram, (Fast Track Mahila Court), Erode, dated 31.08.2017, confirming the judgment and order passed by the learned Judicial Magistrate No.I, Gopichettipalayam in C.C.No.2 of 2008, dated 08.05.2017, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo two years simple imprisonment.

2.The respondent/complainant preferred a private complaint against the petitioner on the ground that the petitioner borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 02.10.2007 and in discharge of this liability, the petitioner issued a cheque (Ex.P1), dated 02.11.2007 for a sum of Rs.5,00,000/- (Rupees Five Lakhs only). When the respondent/complainant presented the cheque for clearance, it was returned with an endorsement "Funds Insufficient". The return memo was marked as Ex.P2. Thereafter, the respondent issued a statutory notice (Ex.P3) and on receipt of the same, the petitioner gave a reply notice (Ex.P6) denying the liability. As a result, the complaint came to be filed against the petitioner.



WEB COPY

3.The Trial Court after appreciating the oral and documentary evidence, came to a conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act must go in favour of the complainant and it was held that the petitioner did not rebut the presumption and accordingly, the Trial Court convicted and sentenced the petitioner for offence under Section 138 of the Negotiable Instruments Act.

4.Aggrieved by the above judgment and order passed by the Trial Court, the petitioner filed an appeal and the same was taken on file in Crl.A.No.119 of 2017. The Appellate Court on reappraisal of the evidence and after considering the findings of the Trial Court, found that there is no ground to interfere with the judgment of the Trial Court and accordingly, the Criminal Appeal came to be dismissed by judgment dated 31.08.2017. Aggrieved by the same, this criminal revision case has been filed before this Court.

5.Heard Mr.D.Rajagopal, learned counsel appearing on behalf of the petitioner and Ms.H.Kavitha, learned counsel appearing on behalf of the respondent.



6.The learned counsel for the petitioner mainly raised two grounds in this case. The first ground that was raised by the learned counsel for the petitioner is that the respondent did not have the financial wherewithal to lend a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner and there was not even an iota of evidence to substantiate the financial status of the respondent. It was therefore submitted that both the Courts below did not consider this issue in a proper perspective. The next ground that was raised by the learned counsel for the petitioner is that there was no legally enforceable debt/liability in this case, since the petitioner never borrowed any amount from the respondent and he had not issued any cheque in favour of the respondent. The learned counsel therefore submitted that both the Courts below had wrongly invoked Section 139 of the Negotiable Instruments Act even without the respondent establishing the legally enforceable debt/liability.

7.Per contra, the learned counsel for the respondent submitted that the petitioner had taken various defence at each stage and the same was properly considered by both the Courts below and ultimately, the findings were rendered and hence, there is no ground to interfere with the conviction and sentence passed against the petitioner.



WEB COPY

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.It is too well settled that the presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused through preponderance of probabilities. Therefore, it depends upon the specific defence taken by an accused in a given case. While establishing the defence, the defence taken by the accused must be consistent and it cannot keep wavering at every stage.

10.In the instant case, after the statutory notice was issued by the respondent, the petitioner gave a reply notice which was marked as Ex.P6. On carefully going through the reply notice, it is seen that the petitioner has taken a very specific stand that he had a business transaction with one Udayakumar and he had issued cheques as security to the said Udayakumar.The further stand taken was that Udayakumar was misusing the cheques that were given to him as security and one such cheque that was given to Udayakumar has been given to the respondent and the same was misused by the respondent. In the reply notice, the petitioner did not take a stand that the subject cheque was a forged document and



the only stand taken was that the petitioner never had any transaction with the respondent.

11.In the course of trial, the petitioner came up with a new stand. According to the petitioner, PW2 was regularly coming to his house to do electrical works and that PW2 had stolen the cheque and forged the same and it has been misused by the respondent. This stand taken by the petitioner is completely different from the stand that was taken in the reply notice.

12.The last stand that was taken by the petitioner was that the respondent did not prove his financial wherewithal and therefore, the respondent did not have the capacity to lend such a huge amount of Rs.5,00,000/- (Rupees Five Lakhs only) to the petitioner.

13.The last stand that was taken by the petitioner runs contrary to the first and second stand that was taken earlier by the petitioner. If the last stand is taken into consideration, then the petitioner must be construed to have admitted the signature found in the cheque and what he is questioning is only with regard to the financial status of the respondent.



14.The Courts below, took all these contradictory stand into consideration.

Insofar as the stand taken by the petitioner to the effect that the signature found in the cheque was a forgery, both the Courts held that the petitioner never took any steps to proceed against PW2 nor did the petitioner take any steps to send the cheque for expert opinion. In view of the same, this defence taken by the petitioner was rejected.

15.Insofar as the defence taken by the petitioner to the effect that the cheque was a blank cheque and the same was also admitted by the respondent when he deposed before the Court, the Courts below applied Section 20 of the Negotiable Instruments Act and held that the principle that is applied to a inchoate instrument will equally apply to a cheque also. This finding of both the Courts below is sufficiently covered by reported judgments.

16.Where the respondent has failed to establish that the cheque is a forged one and no serious attempt was made to question the signature found in the cheque, the presumption under Section 139 of the Negotiable Instruments Act kicks in. The petitioner was not able to rebut this presumption even through preponderance of probabilities, since the petitioner was taking contrary stands and it actually weakened the case of the petitioner.



17. In the light of the above discussion, this Court does not find any ground to interfere with the findings of both the Courts below and those findings do not suffer from any illegality or perversity.

18. The learned counsel for the respondent fairly submitted that if the petitioner is willing to settle the entire cheque amount, the respondent will accept the same and he will not be interested in prosecuting any further against the petitioner.

19. In the result, this Criminal Revision case is disposed of in the following terms:

- (a) The petitioner has already deposited a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) before the Trial Court pursuant to the condition imposed by this Court when the sentence was suspended in Crl.M.P.Nos.12972 and 12974 of 2017 by an order dated 24.10.2017. In view of the same, the petitioner is directed to deposit the balance amount of Rs.4,25,000/- (Rupees Four Lakhs Twenty Five Thousand only) on or before 17.04.2023. If this amount is deposited, the offence will stand compounded and the sentence imposed by both the Courts below will automatically get set aside.



Crl.R.C.No.1337 of 2017

(b) If the petitioner deposits the amount as stated in clause (a), it is left open to the respondent to file an appropriate memo before the Trial Court seeking for the withdrawal of the total sum of Rs.5,00,000/- (Rupees Five Lakhs only) and the Trial Court shall permit the respondent to withdraw the amount.

(c) If the petitioner fails to deposit the amount as directed in clause (a), the petitioner shall surrender before the Trial Court on 18.04.2023 and the petitioner shall be confined to the prison to undergo the sentence and

(d) If the petitioner does not comply with the direction issued in clause (c), the Trial Court is directed to issue non-bailable warrant and secure the petitioner and make him undergo the sentence.

02.03.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr



Crl.R.C.No.1337 of 2017

N. ANAND VENKATESH, J.

SSR

To

- 1.The Additional Sessions Judge,
Magalir Needhimandram/Fast Track Court, Erode.
- 2.The Judicial Magistrate No.I,
Gopichettipalayam.

Crl.R.C.No.1337 of 2017

02.03.2023