IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1543 of 2017

Ravichandran ... Petitioner

vs.

Bathrinath ... Respondent

Prayer: Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 03.11.2017 made in Criminal Appeal No.37 of 2017 on the file of III Additional District and Sessions Court, Cuddalore at Vridhachalam in confirming the judgment dated 20.03.2017 made in S.T.C.No.847 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Neyveli.

For Petitioner : Mr.C.Prabakaran
for M/s.D.S.Thiruma Valavan

For Respondent : Mr.M.Selvam

O R D E R

This Criminal Revision Case was filed against the judgment and order passed by the III Additional District and Sessions Judge, Cuddalore in Crl.A.No.37 of 2017, dated 03.11.2017, dismissing the appeal and confirming the judgment and order passed by the District Munsif-cum-Judicial Magistrate, Neyveli in S.T.C.No.847/2014, dated 20.03.2017, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo one year simple imprisonment and to pay compensation of a sum of Rs.2,00,000/- which is equivalent to the cheque amount.

2. The respondent filed private complaint against the petitioner on the ground that the petitioner borrowed a sum of Rs.2,00,000/- towards his family expenses and for discharging the said debt, the petitioner issued a cheque for a sum of Rs.2,00,000/- (Ex.P.1). When the respondent deposited the cheque on 25.04.2014, the same was returned vide return memo dated 28.04.2014 (Ex.P.2), the respondent issued a legal notice dated 13.05.2014 (Ex.P.3) calling upon the petitioner to pay the cheque amount within a period of 15 days from the date of receipt of the notice. This legal notice was returned as 'unclaimed'. Thereafter, the respondent proceeded to file private complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act.

3. The respondent examined himself as P.W.1 and marked Exs.P1 to P5. The Trial Court, on considering the facts and circumstances of the case and on appreciation of evidence, came to the conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act must go in favour of the respondent and the Trial Court further gave a finding to the effect that the petitioner did not rebut the legal presumption. In view of the same, the Trial Court convicted and sentenced the petitioner for offence under Section 138 of the Negotiable Instruments Act.

4. The petitioner aggrieved by the judgment of the Trial Court, filed an appeal and the same was heard by the III Additional District and Sessions Court, Cuddalore in Crl.A.No.37 of 2017. The appellate Court re-appreciated the evidence and took into

consideration the findings of the Trial Court and came to a conclusion that there are no grounds to interfere with the judgment of the Trial Court. Accordingly, the appeal came to be dismissed by judgment and order dated 03.11.2017.

5. Aggrieved by the same, the present criminal revision case has been filed by the petitioner.

6. Heard Mr.C.Prabakaran learned counsel for the petitioner and Mr.M.Selvam, learned counsel for the respondent.

7. The main grounds that were raised by the learned counsel for the petitioner is that, the statutory notice was not properly served on the petitioner and the notice was returned with an endorsement 'unclaimed' and it is not a valid service. Hence, the complaint itself is not maintainable. The second ground that was raised by the learned counsel for the petitioner is that the respondent did not prove the source of his income and no income tax returns were filed to show that the respondent had lent a sum of Rs.2,00,000/- to the petitioner. The last ground that was raised by the learned counsel for the petitioner is that the respondent stood as guarantor to the petitioner's wife who had taken a chit and since the chit amount was not paid, the same was recovered from the salary of the respondent. It is towards this liability, the cheque was given as security by the petitioner and the said cheque has been misused by the respondent.

8. Per contra, the learned counsel for the respondent submitted that the

defence that was taken by the petitioner was not proved even on the test of preponderance of probabilities and hence the Courts below rightly came to the conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act must go in favour of the respondent. The learned counsel submitted that both the Courts below have given reasons for rejecting the defence taken by the petitioner and the same does not suffer from any perversity. Therefore the learned counsel for the respondent submitted that there are absolutely no merits in this case and sought for the dismissal of this criminal revision case.

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

10. The first ground that was raised by the learned counsel for the petitioner is that the statutory notice that was issued by the respondent was returned as 'unclaimed' and hence there was no proper service of the notice on the petitioner before the private complaint was filed by the respondent.

11. It is seen from records that the address to which the notice was sent by the respondent is the same address that has been shown in the complaint. In fact, in the surrender petition that was filed by the petitioner, it is the very same address which has been mentioned. Therefore, it is very clear from the records that the notice was sent to the correct address of the petitioner and the petitioner had evaded the receipt of the notice and hence the notice was returned as 'unclaimed'. The same must be

taken to be a deemed service of notice on the petitioner. Hence the first ground that was raised by the learned counsel for the petitioner is rejected.

12. The second ground that was raised by the petitioner is that the respondent did not prove his source of income and also did not file any income tax returns to show that he had lent a sum of Rs.2,00,000/- to the petitioner. In the considered view of this Court, the respondent has sufficiently established the lending of the sum of Rs.2,00,000/- to the petitioner and the legal presumption under Section 139 of the Negotiable Instruments Act must lean in favour of the respondent. Therefore, merely because the respondent has not filed any income tax returns that does not mean that there is no liability on the part of the petitioner. In view of the same, the second ground that was raised by the learned counsel for the petitioner is also rejected.

13. The last ground that was raised by the learned counsel for the petitioner is that the transaction between the petitioner and the respondent is different and the cheque that was given as a security was misused by the respondent. To substantiate the same, the deposition of P.W.1 was brought to the notice of this Court. On carefully going through the deposition of P.W.1, it is seen that the respondent had stood as a guarantor for the wife of the petitioner in a chit transaction. The wife of the petitioner failed to repay back the chit amount and hence it resulted in the amount being deducted from the salary of the respondent who stood as guarantor for the transaction. The respondent had admitted that a total amount of Rs.1,83,000/- was recovered from his salary. The respondent had also stated in the evidence that he has initiated

separate proceedings against the wife of the petitioner before the Sub-Court, Neyveli in the year 2014 for recovery of the money. In view of these admissions made by the respondent, it was contended that the cheque which was given as security by the petitioner for the chit transaction has been misused by the respondent.

14. The respondent has categorically denied in the cross examination that any cheque was issued by the petitioner towards security. That apart, it is clear from the evidence that the petitioner and the respondent know each other and both of them were working in Neyveli Lignite Corporation. The petitioner was attempting to connect the chit transaction to the alleged transaction that took place between the respondent and the petitioner, wherein the respondent had lent a sum of Rs.2,00,000/- to the petitioner. If really the petitioner had given a cheque towards security, the petitioner should have proved the same and by merely putting one question to the respondent regarding the chit transaction, there cannot be an assumption that the cheque was issued by the petitioner only as a security for the chit transaction.

15. Rebuttal under Section 139 of the Negotiable Instruments Act must be on the test of preponderance of probabilities and not on assumptions. This would necessarily require that there must be some evidence to rebut the presumption and the evidence cannot be replaced by assumption.

16. Both the Courts below have gone into this issue in detail and found that the

petitioner did not establish that the cheque was given as a security for the chit transaction. This finding rendered by both the Courts does not suffer from any infirmity or illegality. In view of the same, the third ground raised by the learned counsel for the petitioner is also hereby rejected.

17. In the light of the above discussions, this Court finds that there is no infirmity or illegality in the findings rendered by the Courts below and that there are no grounds to interfere with the judgment and order passed by both the Courts below.

18. In the result, this Criminal Revision Petition is disposed of in the following terms.

(a) The petitioner is directed to pay a sum of Rs.2,60,000/- towards compensation to the respondent on or before **27.03.2023.**

(b) If the petitioner pays this amount as directed in Clause (a), the offence shall stand compounded and the judgment and order passed by both the Courts shall stand set aside.

(c) The petitioner has already paid a sum of Rs.1,25,000/- to the respondent. Hence, the petitioner can either directly pay the balance amount of Rs.1,35,000/- to the respondent or if the petitioner is not able to make direct payment, he shall deposit the same before the Trial Court within the time stipulated by this Court. If such deposit is made, it will be left open to the respondent to file appropriate memo before the Trial Court for withdrawal of the amount and the Trial Court shall permit the respondent to withdraw the same.

(d) If the petitioner fails to comply with the direction given in Clause (a) the petitioner shall surrender before the Trial Court on **28.03.2023** and the Trial Court shall confine the petitioner to jail to undergo the sentence imposed by the Trial Court and confirmed by the appellate Court.

(e) If the petitioner fails to surrender as directed in Clause (d), the Trial Court shall take immediate steps to secure the petitioner and send him to jail to undergo the sentence imposed by the Trial Court and confirmed by the appellate Court.

This Criminal Revision Petition is disposed of in the above terms.

09.03.2023

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

To

1. The III Additional District and Sessions Judge,
   Fast Track Court-III, Virudhachalam.

2. The District Munsif-cum-Judicial Magistrate
   Neyveli.

N. ANAND VENKATESH, J.

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