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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

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

Crl.R.C.No.1290 of 2023 and
Crl.M.P.No.10519 of 2023

M.Ravi ... Petitioner

Vs.

M.Sivanantham ... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records and set aside the conviction imposed in the Judgment dated 30.06.2022 made in C.A.No.29 of 2019 on the file of the Principal District and Sessions Judge at Vellore, confirming the conviction imposed in the the Judgment dated 04.03.2019 made in C.C.No.29 of 2019 on the file of the Judicial Magisterial, Katpadi and the same was confirmed by allowing this Criminal Revision Petition.

For Petitioner : Mr.K.P.Anantha Krishna

ORDER

Challenging the order and Judgment dated 30.06.2022 passed by the Principal District and Sessions Judge, Vellore in Crl.A.No.29 of 2019, the present Criminal Revision is filed by the petitioner/accused.

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2. The petitioner is the accused in C.C.No.206 of 2012 on the file of the Judicial Magistrate, Katpadi, Vellore. The respondent/complainant filed a private complaint in C.C.No.206 of 2012 under Section 200 of Cr.P.C., against the revision petitioner/accused before the Judicial Magistrate, Katpadi for an offence punishable under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate took cognizance of the offence, issued summons to the revision petitioner / accused for his appearance. On appearance of the accused, copies of records were furnished to him under Section 207 of Cr.P.C., When the accused was questioned with regard to the substance of the accusation made against him, he pleaded not guilty and the case was posted for trial.

3. The respondent / complainant examined himself as P.W1 and two other witnesses and marked Exs.P1 to P13. The accused was questioned under Section 313 (i) (b) Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him. The accused denied having committed any offence. The accused examined

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himself and two other witnesses and marked Ex.D1 to Ex.D8.

4. After analysing the oral and documentary evidence on record, the learned Judicial Magistrate, Katpadi found the revision petitioner/accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo simple imprisonment for a period of one year and also to pay a fine of Rs.3,000/- in default to undergo Simple Imprisonment for three months. This Judgement was passed on 04.03.2019.

5. Aggrieved over the same, the revision petitioner/accused filed an appeal in Crl.A.No.29 of 2019 before the Principal District and Sessions Judge, Vellore. The learned Principal District and Sessions Judge, Vellore dismissed the appeal, confirming the conviction and sentence passed by the trial court vide his Judgment dated 30.06.2022. Now the present Criminal Revision is filed by the accused as against the Judgment, dated 30.06.2022 passed by the Principal District and Sessions Judge.

6. The case of the complainant in a nutshell is as follows:

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The respondent / complainant and the petitioner / accused are friends and the accused borrowed a sum of Rs.2 lakhs on 01.01.2011 from the respondent / complainant for his family expenses and promised to repay the same together with interest at 25% per annum and executed a promissory note in favour of the complainant apart from handing over a cheque bearing No.559205 dated 15.02.2012 drawn on Canara Bank (Main Branch) Vellore for a sum of Rs.2 lakhs. When the complainant presented the cheque for collection on 16.04.2012, the same was returned for the reason 'insufficient funds' (Cheque return memo, dated 18.04.2012- Ex.P3). When the same was informed to the accused, the latter assured the former that he can present the cheque for collection on 07.05.2012 and on that day, the cheque was once again presented for collection. But the same was returned for 'insufficient funds' vide Memo dated 09.05.2012 (Ex.P5). Thereafter, the respondent/complainant issued a statutory notice dated 21.05.2012 (Ex.P7), demanding the accused to make good the payment. The said notice was received by the accused as is seen from the postal acknowledgment card (Ex.P8). The accused sent a reply dated 16.06.2012 (Ex.P9) in which, the accused had stated that he

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had never seen the respondent / complainant and that he had a money transaction only with one Meganathan who is one of the close relatives of the complainant. According to the revision petitioner /accused, he handed over ten cheques bearing nos.559201 to 559210 to the said Meganathan and one of those cheques was misused by the complainant.

7. Mr.K.P.Anantha Krishna, learned counsel for the petitioner contended that the cheques were issued to Meganathan only as a security for the loan obtained by the revision petitioner/accused. His further contention is that the revision petitioner did not borrow any amount from the respondent / complainant and that the said Meganathan obtained ten blank cheques and three promissory notes at the time of lending a sum of Rs.50,000/- to the revision petitioner/accused. It is also his contention that both the Courts below did not take these aspects into consideration and convicted the accused for an offence under Section 138 of the Negotiable Instruments Act.

8. It is seen from the records that the pro note which is said to

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be executed by the revision petitioner/accused on 01.01.2011 for a sum of Rs.2 lakhs was marked as Ex.P1. The revision petitioner had not disputed his signatures either on the pro-note or on the cheque. When the cheque was presented by the respondent / complainant through his banker viz., Indian Bank, Katpadi, Vellore for collection on 16.04.2012 and subsequently on 07.05.2012, it was returned on both the occasions on the ground of "insufficient funds". Thereafter, the respondent / complainant had issued a legal notice dated 21.05.2012 i.e., within 30 days form the date of return of the cheque.

9. A perusal of the records shows that notice issued to the residential address of the revision petitioner/accused was returned unserved and therefore, the respondent/complainant sent another notice to his office address. However, the revision petitioner / accused admitted during the course of cross examination tht he is residing in the address mentioned in the notice Ex.P7. When the signature on the cheque is admitted, there is a presumption under Section 118 and 138 of the Negotiable Instruments Act, unless the contrary is proved. The specific

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contention of the accused is that he borrowed a sum of Rs.50,000/- from one Meganathan who is a close relative of the complainant and that the said loan was also discharged. According to the accused, the said Meganathan obtained ten blank cheques and three promissory notes and the same were issued only as a security for the aforesaid loan. To substantiate the same, the petitioner has adduced the cheque bearing No.559202 (Ex.D5), certified copy of the complaint filed in C.C.No.102/2012 on the file of the Judicial Magistrate I, Kancheepuram (Ex.D6), Cheque bearing Nos.559202 and 559203 (Exs.D5 and D7) and Promissory note (Ex.D8).

10. As rightly observed by both the Courts below, there is nothing on record to show that the said cheques and promissory notes are connected with the present case. The revision petitioner/accused also did not examine the said Meganathan to substantiate his contention that he borrowed a sum of Rs.50,000/- from him and that the cheques ware issued to him that too for a security purpose. An attempt was made by the revision petitioner before the Courts below that the

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respondent/complainant had no financial ability to lend a sum of Rs.2 lakhs to him. However, this aspect was also dealt with by both the Courts below that the respondent/complainant had discharged his initial burden of proving the lending of amount to the accused and the execution of cheque by the accused in his favour. On the contrary, the revision petitioner/accused did not discharge his burden by adducing any rebuttal evidence.

11. In fact the lower appellate Court in paragraph No.15 and 16 had observed as follows:

> *"15) Further, the contention of the Appellant that the cheque was issued as a security to the said Meganathan is not proved. In the absence of any cogent and rebuttable evidence on the side of the Appellant / Accused to disprove the case of Respondent, this Court is of the view that the Accused had not rebutted the case of the Complainant even atleast by the standards of preponderance of probability, and hence the case of the Respondent / Complainant stands proved. Since the Accused who has admitted his signature and the issuance of cheque etc., not proved the discharge of*

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the loan and not rebutted the case of the Respondent by way of convincing oral and documentary evidence the contention of the Appellant that the cheque was issued only by way of security cannot be acceptable and this Court holds that the Appellant / Accused has not proved his case by way of rebuttable evidence.

16) It is settled position of law that once the signature is admitted and issuance of the cheque is admitted, the presumption U/s 118, 139 and 20 of NI Act comes in to rescue and the accused is estopped from denying the validity of the instruments, and as held by various Hon'ble High Courts and also Hon'ble Apex Court, as far as Section 138 complaints are concerned, the Court has to presume that the cheque has been issued for a enforceable debt or liability. However, the presumption is rebuttable and however the burden of proving that the cheque has not been issued for a debt or liability is on the accused. In this case, the accused had neither proved his case by leading cogent evidence nor by eliciting preponderance of probability that the cheque was issued only as a security. Under such circumstances, this court is of the view that the trial court rightly discussed and decided the case and there is no perversity and irregularity in the finding and does not warrant any interference by this Court in the trial court's judgment.

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There are no valid grounds or reasons to set-aside the conviction and ordering of compensation by the trial Court and accordingly, this Court is inclined to confirm the trial Court's verdict and it is answered to the point that the trial court's findings is liable to be confirmed ."

12. All the above observations are perfectly in order and I do not see any reason to interfere with the findings by both the Courts below. The Criminal Revision case is dismissed as devoid of merits. The Judgment and order dated 30.06.2022 in Crl.A.No.29 of 2019 on the file of the Principal District and Sessions Judge, Vellore is confirmed. The accused is directed to surrender before the trial Court within a period of 15 days from today (24.07.2023), failing which, the trial Court shall take necessary steps for securing the presence of revision petitioner/accused to serve the remaining period of sentence. Connected miscellaneous petition is closed.

24.07.2023

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

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