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Crl.R.C.Nos.1088 & 1089 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.Nos.1088 & 1089 of 2019

Crl.R.C.No.1088 of 2019

M.Wellesley

...Petitioner/Appellant/
Accused

-Vs-

U.Babu

...Respondent/Respondent/
Complainant

Crl.R.C.No.1089 of 2019

M.Wellesley

...Petitioner/Appellant/
Accused

-Vs-

U.Babu

...Respondent/Respondent/
Complainant

Prayer in Crl.R.C.No.1088 of 2019:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to set aside the judgment dated 10.07.2019 made in Criminal Appeal No.28 of 2018 on the file of the learned I Additional District and Sessions Judge, Vellore, modifying the judgment of conviction and sentence dated 20.02.2018 passed in C.C.No.187 of 2011 on the file of the learned Judicial Magistrate, Gudiyatham.



Crl.R.C.Nos.1088 & 1089 of 2019

Prayer in Crl.R.C.No.1089 of 2019:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to set aside the judgment dated 10.07.2019 made in Criminal Appeal No.75 of 2018 on the file of the learned I Additional District and Sessions Judge, Vellore, modifying the judgment of conviction and sentence dated 20.02.2018 passed in C.C.No.187 of 2011 on the file of the learned Judicial Magistrate, Gudiyatham.

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For Petitioner : Mr.B.K.Girish Neelakantan

For Respondent : Mr.E.Kannadasan

COMMON ORDER

The Revision Petitioner is the Accused before the learned Judicial Magistrate, Gudiyatham, in C.C.No.187 of 2011, by judgment dated 20.02.2018, convicted the Accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo two years simple imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo two months simple imprisonment.

2.As against the conviction and sentence imposed by the learned Judicial Magistrate, Gudiyatham, the Accused preferred Crl.A.No.28 of



2018. The de facto Complainant preferred the Appeal in Crl.A.No.75 of 2018 seeking compensation equal to the cheque amount. The learned I Additional District and Sessions Judge, Vellore, by common judgment dated 10.07.2019, dismissed the Crl.A.No.28 of 2018, confirming the conviction recorded by the learned Judicial Magistrate, Gudiyatham, however modified the sentence directing the Accused to undergo six months simple imprisonment and with a further direction to pay compensation of Rs.1,60,000/- to the De facto Complainant apart from fine amount.

3.Crl.A.No.75 of 2018 filed by the de facto Complainant was allowed by the learned I Additional District and Sessions Judge, Vellore. Challenging the judgment of the I Additional District and Sessions Judge, Vellore, passed in Crl.A.No.28 of 2018, the Accused is before this Court.

4.It is the case of the Revision Petitioner that in the statutory notice issued by the Respondent/Complainant, the date of availing the loan had not been stated. Further, in the complaint also the Complainant failed to specifically mention the date of availing the loan by the Accused. Also, in



the evidence of the Complainant as P.W.1, it was not stated clearly on what date the Accused had borrowed money from the Complainant.

5.It is the defence of the Accused that he never borrowed loan from the Complainant. Originally, the brother of the Accused, M.Albert had availed loan to purchase the two-wheeler from the Finance Company in which the Complainant was a partner. At the time of availing the loan by the brother of the Accused, the Accused had issued the cheque, which cheque was relied on by the Complainant only as security. These facts were put in cross-examination to the P.W.1 Complainant, who had also accepted them. It is the further submission of the learned Counsel for the Revision Petitioner that the cheque issued by the Revision Petitioner/Accused in the year 2009 was only for security. Since the brother of the Revision Petitioner/Accused had repaid the loan, he had closed the accounts maintained by him in the Centurion Bank of Punjab Limited, Vellore, which got merged with the HDFC Bank Limited, Vellore. On the date of trial, the Manager of HDFC Bank Limited, Vellore, was examined as P.W.2.



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6.The learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence of P.W.2 and he was not cross-examined on behalf of the Accused, since the learned Counsel for the Accused was ill on the date of appearance of P.W.2, it is the submission of the learned Counsel for the Revision Petitioner that while closing the account, the cheque book is to be surrendered. Accordingly, the Revision Petitioner has surrendered the cheque book as per the rule of the Centurion Bank of Punjab Limited, Vellore. Subsequently, it was merged with HDFC Bank Limited, Vellore, and this part of evidence is available in the evidence of P.W.2. It is the further submission of the learned Counsel for the Revision Petitioner that the Complainant had not examined the Manager of the Finance Company regarding the liability of the Accused as well as the repayment of the loan by the brother of the Accused, M.Albert. It is his contention that without any prior notice the cheque issued by him and the account closed by the Accused with the Centurion Bank of Punjab Limited, Vellore, the cheque which was issued long time back was misused and presented for the amount. Therefore, the same was returned, stating that the account was closed. Therefore, the Complainant has not proved his claim through proper evidence. Based on the presumption available under



Section 138 of the Negotiable Instruments Act, the learned Judicial Magistrate, Gudiyatham, had convicted the Accused and did not consider the defence raised by the Accused, which was available in the evidence of P.W.1.

7.At the time of hearing the Appeal before the I Additional District and Sessions Judge, Vellore, the Accused had filed Crl.M.P.in Criminal Appeal, seeking permission of the Appellate Court to mark the additional documents. Though Crl.M.P was dismissed on the basis of the objection by the learned Counsel for the Complainant, in the Criminal Appeal, the learned Judge failed to consider the points raised by the Appellant from the evidence available through cross-examination of P.W.1 and the evidence of P.W.2 Bank Manager and mechanically confirmed the judgment of the conviction recorded by the learned Judicial Magistrate, Gudiyatham.

8.In the Appeal, the learned I Additional District and Sessions Judge, Vellore, had modified the judgment of imprisonment imposed on the Accused by the learned Judicial Magistrate, Gudiyatham, as two years of imprisonment were modified to six months of imprisonment and fine of



Rs.5,000/- was modified to compensation of Rs.1,60,000/-. Therefore, he had filed this Revision raising the same point which was ignored by the learned Trial Judge as well as the learned Appellate Judge.

9.Learned Counsel for the Respondent/Complainant by way of reply submitted that the contention of the learned Counsel for the Revision Petitioner cannot at all be accepted and the Accused did not send any reply for the statutory notice issued by the Complainant. Also, after the Complainant side evidence was closed, the Accused did not enter the witness box.

10.The Complainant had let in evidence and proved his case through documents. While so, the burden shifts on the Accused as per the provisions of the Negotiable Instruments Act, 1881, even though there is presumption in favour of the Complainant. The Accused shall adduce the evidence by way of rebuttal. Here, the Accused failed to enter the witness box. Therefore, the learned Judicial Magistrate, Gudiyatham, had drawn an adverse inference against the Accused for not letting in evidence by entering the witness box, which means the Accused is shy of entering the



witness box. He might be subjected to cross-examination if he had entered the witness box. Therefore, the judgment recording the guilt of the Accused is a well-reasoned order as per the provisions of the Negotiable Instruments Act, 1881, as well as the provisions of the Indian Evidence Act, and the same does not warrant any interference.

11.It is the further submission of the learned Counsel for the Respondent/Complainant that the learned I Additional District and Sessions Judge, Vellore, by dismissing the Crl.A.Nos.28 and 75 of 2018 had confirmed the finding of the learned Judicial Magistrate, Vellore, which also does not warrant any interference.

12.It is the further submission of the Respondent/Complainant that the attempt of the Accused seeking permission of the Appellate Court to furnish additional documents has failed and the Petition was dismissed. He had not agitated the said order further. Further, he would submit that at the time of admitting the Criminal Revision Case this Court had suspended the sentence of imprisonment imposed on the Accused/Appellant/Revision Petitioner and he had not complied with the order of this Court.



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Point for consideration:

Whether this Revision Petition has to be allowed and the Judgment of conviction recorded by the learned Judicial Magistrate, Gudiyatham in C.C.No.187 of 2011 dated 20.02.2018 modified by the learned I Additional District and Sessions Judge, Vellore in Criminal Appeal Nos.28 & 75 of 2018 dated 20.02.2018 is to be set aside as perverse?

13.On consideration of the rival submission, the contention of the learned Counsel for the Revision Petitioner that the case even though found reasonable cannot be accepted at the stage of this Revision. When the Complainant had issued statutory notice, the Revision Petitioner had not sent reply to the statutory notice.

14.If what had been stated by the Revision Petitioner/Accused is true that the Revision Petitioner had not received statutory notice, after service of summons from the Court in the Criminal Complaint in C.C.No.187/2011, he could have challenged the filing of the Criminal Complaint under Section 138 of Negotiable Instruments Act and had disputed the filing of the Complaint on the ground that without following



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due procedures, the Complaint had been filed.

15. Even if the contention of the Accused before the trial Court was rejected by the learned Judicial Magistrate, he ought to have disputed the maintainability of the Complaint by entering the witness box and adducing evidence. In cases under Section 138 of Negotiable Instruments Act, there is always strong presumption on the de facto Complainant under Section 118 of Negotiable Instruments Act. Merely based on presumption, the Complainant's version is not accepted fully. That is why, under rebuttal, the Accused in 138 of Negotiable Instruments Act granted liberty to let in rebuttal evidence. Here, in this case, even though the Complainant evidence was closed, the Accused was examined under Section 313 of Cr.P.C. The Accused was aware of the incriminating evidence against him. Therefore, the strong presumption under Section 118 of Negotiable Instruments Act is in favour of the Complainant. The Accused was aware of the same, still he did not enter the witness box. Therefore, the strong presumption in favour of the Complainant is considered by the Criminal Court against the Accused. Now, after exhausting all the remedy available to the Accused, during trial as well as in the Appeal and the Judgment of



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the learned trial Judge having been confirmed based on appreciation of evidence by the learned Appellate Judge cannot be set aside in Revision exercising the power of this Court under Section 397 r/w. 401 of Criminal Procedure Code. The concurrent finding of fact cannot be interfered with by the Revision Court. The power of the Revision Court is only a narrow compass. Therefore, the contention of the learned Counsel for the Revision Petitioner is found unacceptable in the light of the power of Revision exercised by the High Court. There is strong presumption by the Accused and he had not exercised by adducing rebuttal evidence.

16.The submission of the learned Counsel for the Respondent/Complainant is found acceptable in the light of the fact that there are concurrent findings on appreciation of fact which cannot be interfered in Revision by exercising the power of Revision. Under those circumstances, the argument of the learned Counsel for the Respondent/Complainant is accepted and the argument of the learned Counsel for the Revision Petitioner is to be rejected.

17. In the light of the above discussion, the point for consideration is



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answered in favour of the Respondent and against the Revision Petitioner.

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The finding of guilt recorded by the learned Judicial Magistrate, Gudiyatham in C.C.No.187 of 2011 dated 20.02.2018 modified by the learned I Additional District and Sessions Judge, Vellore in Criminal Appeal Nos.28 & 75 of 2018 dated 20.02.2018 cannot be set aside.

In the result, the above **Criminal Revision Cases stands dismissed.**

The Judgment of the learned Judicial Magistrate, Gudiyatham in C.C.No.187 of 2011 dated 20.02.2018 modified by the learned I Additional District and Sessions Judge, Vellore in Criminal Appeal Nos.28 & 75 of 2018 dated 20.02.2018 is confirmed. The learned Judicial Magistrate, Gudiyatham, is directed to issue warrant and secure the Accused in C.C.No.187 of 2011 to undergo the sentence of imprisonment as per the common judgment passed by the learned I Additional District and Sessions Judge, Vellore in Criminal Appeal Nos.28 & 75 of 2018 dated 20.02.2018.

14.07.2023

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Note: Registry is directed to call for compliance report of this order from



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the learned Judicial Magistrate, Gudiyatham, after a month from the date of issue of a copy of this order.

To

- 1.The Judicial Magistrate, Gudiyatham.
- 2.The I Additional District and Sessions Judge, Vellore,

SATHI KUMAR SUKUMARA KURUP, J.,



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