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Crl.R.C.No.10 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.03.2023

Pronounced on : 17.03.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.10 of 2020

and

Crl.M.P.No.65 of 2020

Natarajan

... Petitioner

/versus/

P.Paramasivam

... Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records and to set aside the order of acquittal dated 19.12.2011 made in C.C.No.439 of 2010 on the file of the Judicial Magistrate II, Coimbatore which was confirmed by the V Additional District and Sessions Judge, Coimbatore in C.A.No.232 of 2018 by judgment dated 16.07.2019 and allow the Criminal Revision to convict the respondent/accused.

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For Petitioner :Mr.S.Karthikai Balan

For Respondent :Mr.M.Mariappan

ORDER

This Criminal Revision Case is filed by the complainant being aggrieved by the dismissal of his private complaint by the Courts below, filed under Section 138 of Negotiable Instruments Act.

2. The case of the complainant is that on 20.11.2009, one Paramasivam, the accused herein gave a cheque for Rs.3,00,000/- drawn at Tamil Nadu Industrial Co-operative Bank, Radhakrishnan Road Branch, Coimbatore, to discharge his debt. When the said cheque was presented for collection on the next day with the complainant's banker viz. The South Indian Bank, Othakal Mandapam, the cheque was returned with an endorsement "Funds Insufficient". The same was intimated to the accused by the complainant, for which the accused requested the complainant to represent the cheque after four weeks. Hence the cheque was represented on 23.12.2009, then again the cheque returned for the very same reason. This



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time when the complainant informed the accused about the bouncing of the cheque for the second time, the accused promised that he will make arrangements for honouring the cheque during the 1st week of March 2010 and requested the complainant to present the cheque during 1st week of March. Believing the promise given by the accused, the complainant presented the cheque for the 3rd time on 11.03.2010, but it was again returned for the 3rd time. Therefore, the complainant issued a statutory notice dated 13.03.2010 through his counsel to the accused informing him that the cheque issued to discharge the debt has been returned for want of funds and therefore to pay the cheque amount within a period of 15 days, failing which he will have to face the criminal prosecution. The notice was received by the accused on 15.03.2010 but the accused neither replied nor paid the money. Hence the complaint under Section 138 of Negotiable Instruments Act, was presented before the Judicial Magistrate II, Coimbatore, the complaint was taken on file in C.C.No.439 of 2010.



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3. To prove his complaint, the complainant, Natarajan deposed and marked 12 documents. To disprove the complaint, on the side of accused one Selvaraj and Saraswathi were examined as defence witnesses. The sale deed entered into between Selvaraj and Saraswathi was marked as Ex.D1 dated 30.10.2008. The Power of Attorney executed by Selvaraj (DW.1) in favour of the accused has been marked as Ex.D2 dated 12.05.2010.

4. While the complainant stated that the subject cheque Ex.P1 dated 20.11.2009 was issued to him to discharge the debt incurred by the accused, defending the accusation, the accused through Selvaraj (DW.1) and Sarawathi (DW.2) had pleaded that Selvaraj (DW.1) purchased the property owned by DW.2 under the sale deed Ex.D1 dated 30.10.2008. Saraswathi (DW.2) is none other than the sister of the complainant, Natarajan. On 12.05.2010, Selvaraj (DW.1) executed a general power of attorney to the accused in respect of the property he purchased from Saraswathi (DW.2). Since there was Rs.3,00,000/- due and payable by DW.1 to DW.2 in connection with the sale deed Ex.D1, the accused who was holding the



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Power of Attorney on behalf of DW.2 had given a signed blank cheque for a sum of Rs.3,00,000/- to Saraswathi (DW.2), the vendor of the property. Since there was a dispute between the complainant and her sister DW.2, the complainant snatched away the blank cheque from DW.2 and filled his name and presented for collection.

5. The Trial Court on appreciating the evidence, particularly the admission of the complainant in the cross examination that he did not know the name of the accused father and he did not know why and for what purpose the accused borrowed money. He had also admitted that the complainant had never visited the house of the accused and had never obtained any document for advancing the loan to the accused. Whereas, the plausible explanation was given by the accused to rebut the presumption that the cheque was given to Saraswathi (DW.2), the sister of the complainant in connection with the transaction of the land owned by DW.2. For the said reason, the complaint was dismissed.



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6. Being aggrieved by the dismissal order, the complainant had preferred an appeal before the High Court of Madras at that time. But later, in view of the Full Bench decision, on jurisdiction, the appeal against acquittal in a private complaint arising under Section 138 of Negotiable Instruments Act, pending in High Courts were transferred to District Courts. Thus, the appeal C.A.No.901 of 2012 on the file of High Court was transferred to the V Additional District and Sessions Court, Coimbatore and re-numbered as C.A.No.232/2018. The Appellate Court on perusal of the materials produced on either side, confirmed the judgment of the Trial Court. In the said circumstances, the present revision petition is filed.

7. The learned counsel for the revision petitioner/complainant contended that the Courts below has heavily relied upon the testimony of DW.1 and DW.2 and accepted the defence documents marked as Ex.D1 and Ex.D2. Whereas, they have failed to consider that the recital of Ex.D1 dated 30.10.2008. The vendor and the purchaser namely DW.2 and DW.1 had specifically stated that the entire sale consideration has been passed to the



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vendor. While so, there is no necessity to give a cheque for Rs.3,00,000/-. Further the Power of Attorney marked as Ex.D2 is dated 12.05.2010, whereas the cheque Ex.P1 is dated 20.11.2009 and the statutory notice dated 13.03.2010 was received by the accused on 15.03.2010. Thus, Ex.D2 is subsequent document to the cheque and statutory notice. Therefore, it is obvious that it was created in connivance with DW.1 to defeat the lawful claim of the complainant. Therefore, the presumption under Section 139 of Negotiable Instruments Act ought to have been drawn against the accused.

8. The presumption under Section 139 of N.I.Act, is well settled. The Court has time and again reiterated that unless and until the complainant proves the foundational fact like existence of debt and issuance of cheque for discharge of the debt, the presumption under Section 139 of Negotiable Instruments Act cannot be drawn.



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9. In this case, the complainant obviously has not established the foundational facts when he advanced the money to the accused and the understanding between him and the accused in respect of repayment while advancing the money. Except the cheque which is marked as Ex.P1, the complainant unable to say under what circumstances the subject cheque Ex.P1 was given by the accused to the complainant. Though he claims that the cheque was given to discharge the existing debt, but failed to explain in his complaint and deposition as to how the debt occurred. Therefore, the Courts below has rightly held that the complainant has not proved the foundational facts required to draw presumption under Section 138 of Negotiable Instruments Act.

10. That apart, the accused has brought out *prima facie* material to probalilise his defence that the cheque Ex.P1 was not given to the complainant, but it was given to DW.1 who in turn given it to D.W.2 and the reason for giving the cheque to DW.2 is also stated by DW.2 and DW.1. Since the accused has proved his defence, the Courts below has rightly



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dismissed the complaint.

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11. The learned counsel for the petitioner/complainant referring the testimony of D.W.2 emphasised that D.W.2 and the complainant though sister and brother admittedly not in good terms. She also admits that she know only D.W.1 and not the accused. She admits that she did not give any complaint to the police about snatching of the cheque from her by the complainant. Therefore, the complaint cannot be disbelieved.

12. This Court, on perusal of documents and the testimony of the witnesses find that, the complainant who claims to have advanced loan to the accused not able to prove the basic facts how and when the debt accrued. He admits the accused is a stranger to him. While so, lending Rs.3,00,000/- to a stranger just on receiving a blank cheque is totally improbable. Therefore, there cannot be a different view then what expressed by the Courts below. Therefore the revision petition deserves to be dismissed.



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13. Accordingly, this Criminal Revision Case stands dismissed.

Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

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Index:yes/no
speaking order/non speaking order
rpl

To :

- 1.The V Additional District and Sessions Judge, Coimbatore
- 2.The Judicial Magistrate II, Coimbatore.



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DR.G.JAYACHANDRAN,J.

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Pre-Delivery Order made in
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17.03.2023