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Crl.R.C.No.240 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.240 of 2020

and

Crl.M.P.No.1745 of 2020

Sengathirselvan
S/o.Ramasamy

.... Petitioner/Appellant/Complainant

Vs

Kamarunisa
W/o.Rajkumar

.... Respondent/Respondent/Accused

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records and set aside the Judgment dated 02.07.2019 in C.A.No.08 of 2019 on the file of the Principal District and Sessions Judge, Perambalur against STC No.828 of 2012 on the file of the Judicial Magistrate, Perambalur.

For Petitioner : M/s.L.Meena

For Respondent : Mr. S.T.Raja

for Mr.Om Sai Ram

ORDER

This Criminal Revision Petition is filed challenging the concurrent finding of the Courts below dismissing the private complaint filed under Section 138 of Negotiable Instruments Act.



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2. The facts of the case is that on 16.05.2012, the respondent herein to discharge her liability, has given a cheque for a sum of Rs.5,00,000/- towards the petitioner. When the said cheque was presented for collection, the same was returned as “insufficient funds”. The statutory notice caused to the revision petitioner, was not received by the respondent and thereafter, a private complaint was filed and the same was taken on file in STC No.828 of 2012.

3. After considering the evidence let in by the complainant, the Trial Court has dismissed the complaint stating that the respondent had probalised her defence as the cheque was not issued to discharge the legally enforceable debt. Contrarily the complainant has not placed any evidence to show that how and when the respondent borrowed Rs.5,00,000/- from him and how the cheque was issued to discharge the legally enforceable debt.

4. Aggrieved by the dismissal of his complaint, the revision petitioner herein has preferred an appeal before the Principal District



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Judge, Perambalur and the same was taken on file in C.A.No.8 of 2019.

The Appellate Court has also disbelieved the case of the complainant and dismissed the appeal filed by the revision petitioner. Against the concurrent findings, the revision petition filed on the ground that the Courts below failed to observe the decision of the Hon'ble Supreme Court of India rendered in **2019 SAR (Criminal) 309 in the case of Bir Singh Vs. Mukesh Kumar**. The Hon'ble Supreme Court of India in the case cited supra held that if a signed blank cheque is voluntarily given to a payee to discharge her debt, the payee can fill the amount and other particulars and presented it for collection and if the said cheque is bounced, the presumption that the drawer has given the cheque to discharge the liability has to be drawn.

5. The learned counsel appearing for the revision petitioner further stated that the Trial Court dismissed the complaint by misreading the testimony of P.W.1 in the cross examination. It is contended by the revision petitioner that the complainant has not admitted that the blank cheque was received from the sister of the accused. The First Appellate



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Court again wrongly observed that the complainant has admitted that the subject cheque was received by him from one Pappy, who is the sister of the accused. Further, it is contended by the revision petitioner that the Trial Court has relied on Ex.D2, which is a letter written by the complainant to his banker much after the presentation of the cheque and after initiated the proceeding under Section 138 of Negotiable Instruments Act.

6. The learned counsel appearing for the respondent, in response, submitted that the complainant has failed to prove the foundational fact of the alleged borrowing of Rs.5,00,000/- from him and the receipt of the cheque to discharge the said borrowing. Nowhere in his notice or in the complaint or in the chief examination, he had disclosed the date on which the accused borrowed the money and manner in which he advanced the money to the accused. In fact, petitioner in the cross examination had conceded that he was not aware how the cheque was given to him. Therefore, the defence case that unfilled signed cheque was handed over to the sister of the accused and she in turn has



given to the complainant for the loan transaction gets probabilised.

7. The learned counsel for the respondent/accused submitted that the Courts below had concurrently held that the accused has rebutted the presumption by preponderance of probabilities. Whereas, the complainant has failed to prove the foundational fact of borrowing and the cheque had been issued for a legally enforceable debt. While the Courts below have concurrently held in favour of the accused, under the revision jurisdiction, this Court, need not substitute its view even if the other alternate view is probable.

8. On perusing the evidence and submissions made by the learned counsels, this Court finds that the finding of the Courts below does not warrant any interference under Section 397 of Cr.P.C read with 401 of Cr.P.C, since the correctness, legality and propriety of the finding does not indicate any perversity or error apparent. As laid down by the Hon'ble Supreme Court of India, it is the duty of the complainant to prove the foundational fact regarding the enforceability of the debt and



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the cheque, which is the subject matter of the complaint been issued pursuant to the debt, to discharge the said debt. .

9. In this case, except the cheque, which is marked as Ex.P3, no evidence adduced regarding the alleged borrowing of Rs.5,00,000/- from the complainant. While going through the complaint, we find in the complaint it is not even mentioned when the money transaction took place between him and the accused. It is only stated that the subject cheque was issued to him on 16.05.2012 to discharge the existing debt. As to how the existing debt arose remain unexplained. This has prompted the Courts below to negative the complaint.

10. This Court also finds yet another infirmity in the complaint. The cheque dated 16.05.2012 is presented for collection but returned for “insufficient funds” on 21.05.2012. The complainant has received the returned cheque with memo on 23.05.2012. The first notice issued on 28.05.2012. Since, the first notice was not received by the accused and returned unserved, the complainant has caused the second



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notice on 26.06.2012. The complaint is presented on 09.07.2004. There is a delay in filling the complaint, while reckoning the limitation for causing the first notice. Conveniently, the second notice, which was relied upon to reckon to same the limitation had not been marked in the Trial. The second notice was caused beyond 30 days period of limitation from the date of return of the cheque and no condonation request made by the complainant. Though this fact has not been considered by the Trial Court, for that reason also the complaint is liable to be dismissed and the dismissal of the complaint need not be given life after lapse of 10 days.

11. For the above said reasons, the revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

12.04.2023

Internet : Yes/No

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Dr.G.JAYACHANDRAN, J.

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To

1. The Principal District and Sessions Judge,
Perambalur

2. The Judicial Magistrate,
Perambalur.

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