BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.07.2023

Delivered On : 04.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.185 of 2019

Vasanthi Suresh .. Petitioner

Vs.

Sathiyanesan .. Respondent

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to set aside the judgment of confirming conviction and sentence made in C.A.No.93 of 2012 by the Mahila (Fast Track Court), Nagercoil dated 30.10.2018 confirming the judgment made in S.T.C.No.1506 of 2007 by the learned Judicial Magistrate No.I, Kulithurai dated 08.10.2012.

For Petitioner : Mr.S.Titus
For Respondent : Mr.M.R.Sreenivasan

ORDER

This petition has been filed by the petitioner to set aside the judgment and conviction passed by the Mahila Fast Track Court, Nagercoil in Crl.A.No.93 of 2012 on 30.10.2018, in confirming the judgment and conviction passed by the learned Judicial Magistrate No.I, Kulithurai in S.T.C.No.1506 of 2007 on 08.10.2012. In the trial Court, the complainant filed a complaint under Section 138 of Negotiable Instruments Act as against the petitioner and the trial Court convicted the accused and sentence him to undergo one year simple imprisonment and to pay a sum of Rs. 5,000/- (Rupees Five Thousand only) as compensation in default to undergo three months simple imprisonment by a judgment, dated 08.10.2012. As against the said conviction and judgment, the petitioner filed a criminal appeal in C.A.No.93 of 2012 and the same was disposed of by the Mahila Court (Fast Track Court), Nagercoil, by dismissing the appeal through its judgment dated 30.10.2018. Aggrieved by the said judgment, this present Criminal Revision Case is filed.

2.The case of the complainant is that on 03.12.2006, the petitioner borrowed a sum of Rs.7,00,000/- and for that, he gave a post dated cheque dated 03.02.2007 of Canara Bank, Marthandam Branch. When the defacto complainant presented the cheque for collection before Central Cooperative Bank, Kaliyakkavilai Branch, the same was returned as 'payment stopped by the drawer'. Thereafter on 10.02.2007, the defacto complainant issued notice and the same was received on 12.02.2007. Thereafter, the petitioner neither given reply nor repaid the amount. Hence, the defacto complainant had given a private complaint before the learned Judicial Magistrate No.I, Kuzhithurai. The learned Magistrate had taken cognizance in S.T.C.No.1506 of 2007 for the offence under Section 138 of Negotiable

Instruments Act. Thereafter, issued process to the accused and accused was served copies under Section 207 of Cr.P.C., and then substance of the charge was explained to the accused and she denied charges.

3.The complainant had examined P.W.1 to P.W.3 and marked Exs.P.1 to P.8 and on the side of the accused, no one was examined and marked Exs.D.1 to D.3. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating circumstances found in the complainant side evidences. The accused denied the evidences.

4.Upon perusing the oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced her to undergo one year simple imprisonment and imposed fine of Rs.5,000/- (Rupees Five Thousand only) in default to undergo three months simple imprisonment by a judgment, dated 08.10.2012. Aggrieved by the said conviction and judgment, the petitioner filed a criminal appeal in C.A.No.93 of 2012 before the Principal Sessions Court and the same was made over to Mahila Fast Track Court, Nagercoil. The appellate Court also confirmed the judgment and conviction and dismissed the appeal through its judgment dated 13.10.2018.

5.Aggrieved by the said judgment, this revision case has been filed on the following grounds:-

The judgment of the trial Court as well as the appellate Court are contrary to law, weight of the evidences and all probabilities of the case. The appellate Court failed to consider that the respondent did not have source of income and did not adduce documents or any evidence to show his income. The lower Court failed to note that the burden of proof is upon the complainant and the complainant failed to prove the case with sufficient evidence. The trial Court failed to note that there is no evidence for the issue of the cheque in discharge of debt or liability. The trial Court failed to consider that as per the complainant evidence, the cheque was presented before the Kaliyakkavilai branch but the seal was named as Marthandam branch. Further the respondent already given a complaint to the bank for the loss of 10 cheque leaves on 27.06.2006. The complainant failed to prove the previous transaction between the complainant and the accused. The lower Courts failed to consider that already cheque leaves were misplaced by the accused and thereafter, she paid penalty to bank to a sum of Rs.309/- and obtained new cheque book. The complainant has not produced the income tax particulars and this transaction was not shown in his income tax returns. The trial Court failed to consider Ex.D1 to Ex.D3 and the defence case is proved through documentary evidence.

6.The learned counsel appearing for the petitioner would contend that there is no relationship between the parties as debtor and creditor. The petitioner does not know about the respondent and already the petitioner had given complaint before the bank stating that her check leaves were misplaced and thereafter, she obtained new cheque book. Among those cheque leaves, the present cheque was misused by the respondent. In order to prove the same, the petitioner produced Ex.D1 to Ex.D3 and the Bank Manager who was examined as P.W.3 also in his evidence admitted that the petitioner has already intimated to the bank stating that cheque leaves were lost and the bank has also levied penalty for stop payment. Further the petitioner has no means to pay the above said huge amount of Rs.7,00,000/- and she failed to prove her source of income. According to the complainant, the petitioner is known person and already there was money transaction between the parties. But the complainant failed to produce the money lending licence and also failed to prove the previous transaction between the parties. The evidence of P.W.1 is highly doubtful and there are major discrepancies in the evidence of P.W.1 and the address of the complainant was wrongly mentioned. The address given by the complainant is not correct and it is mentioned that the village is situated in Tamil Nadu and the State mentioned as Kerala. According to the petitioner, the cheque was presented in Kaliyakkavilai branch but the seal affixed in the cheque shows that it was presented in Marthandam branch. These are all the major discrepancies and the Courts below failed to consider the same. Therefore the revision is liable to be allowed.

7.To support his contention, he relied upon the following judgments:-

(I)K.Sadanandan v. V.S.Satheesh Kumar and another reported in (2016) BC 563 (Ker.).

(ii)Ramasamy v. S.Jafer Ali and others reported in (2021) 4 MLJ (Crl)279.

(iii)Krishna Janardhan Bhat v. Dattatraya G. Hegde reported in 2008 Crl. L. J. 1172.

(iv)Krishna Raju Finances, Hyderabad v. Abida Sultana and another reported in 2004 CRL. L. J. 4019.

(v)Basalingappa v. Mudibasappa reported in AIR 2019 SUPREME COURT 1983.

(vi)K.Ilayarajalingam v. K.Karthikeyan reported in (2022) 3 MLJ (Crl)397.

8.The learned counsel appearing for the respondent would contend that the petitioner has not denied the signature found in the disputed cheque. Thereby the burden is lies on the petitioner. P.W.1 categorically deposed about the issuance of cheque and presented for collection before the bank and P.W.2 also deposed about the presentation of cheque for collection and return of cheque and P.W.3 also deposed about the issuance of cheque and presentation and return of cheque. Once the petitioner/accused admitted the signature, the petitioner has to prove that for what purpose the cheque was issued. According to the petitioner, the cheque was misplaced and thereby, she had given a complaint before the bank and requested for stop payment. The petitioner has not given police complaint for the alleged loss of cheque. She only gave request for stop payment for the particular cheque not for all the cheque leaves. Further in order to prove the contention of the petitioner, no any witness was examined. The accused also did not enter into witness box to put forth her contention and thereby, she failed to prove the contention raised by her. However, the witness P.W.1 categorically stated that the accused was known to him and already there was money transaction between the parties and the defacto complainant had given money to the petitioner. The aforesaid amount was given as personal loan and not from the Finance company. The defacto complainant has proved the case with sufficient evidence and the trial Court also elaborately discussed about the same and correctly convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and thereby, the revision is liable to be dismissed.

9.To support his contention, he relied upon the following judgments:-

(I)Anil Saini v. Vikesh Kumar Singh and another reported in 2015 3 CurCC 328.

(ii)HMT Watches Ltd., v. M.A.Abida and another reported in 2015 (2) CTC 446.

10.Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the judgment of the Mahila(Fast Track Court), Nagercoil in Crl.A.No.93 of 2012 on 30.10.2018, in confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Kuzhithurai in S.T.C.No.1506 of 2007 on 08.10.2012 is sustainable according to law and facts.

Point:-

11.The case of the petitioner is that the respondent herein filed a cheque case before the learned Judicial Magistrate No.I, Kuzhithurai in S.T.C.No.1506 of 2007 alleging that the petitioner obtained loan for a sum of Rs.7,00,000/- from the defacto complainant on 03.12.2006 for that she issued post dated cheque dated 03.02.2007 (Canara bank, Marthandam branch). When the same was presented for collection through Central Cooperative Bank, Kaliyakkavilai, the said cheque was returned as stop payment by memo dated 08.02.2007. Thereafter on 10.02.2007, issued notice and the same was received by the petitioner on 12.02.2007. Thereafter, the petitioner neither given reply nor repaid the amount. Hence, he filed a complaint.

12.The petitioner denied the relationship as debtor and creditor between the parties. He also contended that already she has given a request before the bank alleging that 10 cheque leaves were misplaced by the petitioner. For that she requested for stop payment and for that the bank also levied penalty of Rs.309/-. The aforesaid cheque was misplaced by the complainant. In this case, the petitioner has not denied the signature found in the cheque. According to her, the cheque along with 10 cheque leaves were misplaced and thereby, she informed the bank for stop payment and the bank also levied penalty for that. Had the cheque leaves were misplaced as alleged by the petitioner, he would have requested for stop payment for all the cheque leaves. But the petitioner mentioned only the particular number of the cheque and requested for stop payment and paid penalty for only one cheque. This shows the conduct of the petitioner.

13.Further the petitioner has stated that she did not know the complainant and there is no relationship as debtor and creditor and the defacto complainant misused the cheque. In order to prove her contention, she failed to enter into witness box and deposed about the above said happenings. Further P.W.1 deposed that the petitioner obtained loan for a sum of Rs.7,00,000/- and already there was money transaction between them and particularly he borrowed the said loan for the studies of his son and thereafter, the cheque was presented for collection and the same was returned as 'stop payment'. It is also admitted that already the defacto complainant has sent a notice to the petitioner regarding the return of the cheque but the petitioner failed to send reply. There is no any explanation for not sending the reply. Therefore, the petitioner failed to prove his contention. Per contra the complainant side evidence clearly shows the borrowal of amount, issuance of cheque and the cheque was returned as stop payment. The petitioner also admitted the stop payment.

14.P.W.3 in his evidence stated that on 26.06.2006, one Vasanthi Suresh had given a petition alleging that when she was travelling in auto, the cheque book was misplaced and the number of the cheque is 563610 and that if the cheque was presented for collection, do not honour the cheque. For the stop payment, a sum of Rs.309/- was levied as penalty. Thereafter, she obtained new cheque book dated 27.06.2006. Therefore, from the evidence of P.W.3, it is clear that the accused requested the bank not to honour a particular cheque since it was lost. According to the petitioner, she misplaced 10 cheque leaves. If so why she had not requested for stop payment for all cheques and only particular cheque alone was requested for stop payment. This creates serious doubt over the conduct of the petitioner. Further the petitioner had not given police complaint for the alleged misplace of cheque leaves. There is no mention about the particulars of other cheque leaves. Even according to the petitioner, there is no reference about whether the above cheque leaves are blank cheque leaves or signed cheque leaves The particular disputed cheque was signed and the signature also admitted by the petitioner. Had the cheque was lost, then how the signature of the petitioner was affixed in the said cheque is to be explained by the petitioner. But there is no any proper explanation by the petitioner to that regard. Therefore, the case of the petitioner is unbelievable. Further, the petitioner failed to enter into witness box and subjected for examination before the trial Court.

15.The learned counsel appearing for the petitioner has argued that the petitioner had already given complaint before the bank in respect of misplacement of the cheque and thereby the offence is not made out under Section 138 of Negotiable Instruments Act and he relied in the case of ***K.Sadanandan v. V.S.Satheesh Kumar and another*** reported in ***(2016) BC 563 (Ker.).*** On reading of the said judgment, it will not be applicable to the present facts of the case. In this case, the lost of cheque has not been proved by the petitioner and he had not given complaint before the police and made request for stop payment of a particular cheque when 10 cheques were misplaced.

16.Further the learned counsel appearing for the petitioner argued that the presumption under Section 139 of Negotiable Instruments Act is rebuttable presumption and the said presumption was rebutted. To support his contention, he relied on the judgments in

(i) ***Ramasamy v. S.Jafer Ali and others*** reported in ***(2021) 4 MLJ (Crl)279***.

(ii)***Krishna Janardhan Bhat v. Dattatraya G. Hegde*** reported in ***2008 Crl. L. J. 1172***.

17.On careful reading of the said judgment, it is clear that the presumption under Section 139 of Negotiable Instruments Act is rebuttable presumption and if the accused had successfully demonstrated rebuttal of presumption, he could be acquitted and the presumption is not to the existence of legally recoverable debt and further the accused not required to step into witness box and he may be discharged his burden on the basis of materials brought on record. In this case, the complainant proved that the cheque was issued for legally enforceable debt and thereby the presumption under Section 139 of Negotiable Instruments Act is in his favour. Further the complainant proved the issuance of cheque and borrowal of the loan amount. The accused failed to prove his contention and no materials available in his favour and he failed to enter into witness box and thereby the aforesaid case law will not be applicable to the present facts of the case.

18.The learned counsel appearing for the petitioner also relied in the case of ***Krishna Raju Finances, Hyderabad v. Abida Sultana and another*** reported in ***2004 CRL. L. J. 4019*** stating that the complainant is a money lender but he did not produce the licence and thereby, the accused is entitled for acquittal. The contention of the complainant is that he has not paid the money under capacity of money lender and he gave money to the petitioner in his personal capacity. Hence, the aforesaid case law is not applicable to the present facts of the case.

19.Further he relied in the cases of (I)***Basalingappa v. Mudibasappa*** reported in ***AIR 2019 SUPREME COURT 1983*** and (ii)***Tamilarasan v. Murugan*** reported in ***(2022) 1 MLJ (Crl.) 442*** and (iii) ***K.Ilayarajalingam v. K.Karthikeyan*** reported in ***(2022) 3 MLJ (Crl) 397*** alleging that the complaint has not proved his financial capacity to pay the said amount. But no any question put to the complainant while cross examination by the accused and not taken plea before the trial Court. Further in this case, the petitioner himself admitted the signature and he failed to prove his defence that the cheque was misplaced and mere evasive denial is not sufficient to deny the financial capacity of the petitioner. Hence, this cited case laws are also not applicable to the present facts of the case.

20.The learned counsel appearing for the respondent has argued that merely because the petitioner asked the bank to stop payment prior to dishonour of cheque by itself is not sufficient to cast any doubt on the version of complaint and instructed to stop payment if issued to banker would attract offence punishable under Section 138 of Negotiable Instruments Act. To support his contention, he relied on the judgments in

(i)***Anil Saini v. Vikesh Kumar Singh and another*** reported in ***2015 3 CurCC 328***,

(ii)***HMT Watches Ltd. v. M.A.Abida & another*** reported in ***2015(2) CTC 446***.

21.On careful reading of the said judgment, it is clear that merely because the petitioner asked his bank to stop payment prior to dishonor of the cheque is not sufficient to cast any doubt on the version of the respondent regarding the issuance of the cheque in question towards a loan and mere instruction to stop payment if issued to bank would attract offence under Section 138 of Negotiable Instruments Act. In the case on hand also, the petitioner simply requested the bank for stop payment and failed to prove the alleged lost of cheque. Hence, the aforesaid case laws are squarely applicable to the present case. The complainant proved the case by examining the witness and produced the documents before the trial Court and the trial Court also elaborately discussed about the case and the liability of the petitioner and correctly convicted the accused.

22.The trial Court also relied upon the judgment of the Hon'ble Supreme Court reported in 2010 (2) Madras Weekly Notes (Criminal) TCC 5. The appellate Court also discussed about the non examination of the accused and non issuance and non receipt of the notice by the defacto complainant and correctly dismissed the appeal. Thereby, there is no any infirmity found on the judgment and conviction passed by the Courts below and thereby, the Criminal Revision Case has no merits and deserved to be dismissed.

23.In the result, the Criminal Revision Petition is dismissed and the judgment and conviction passed by the Mahila Fast Track Court, Nagercoil in Crl.A.No.93 of 2012 on 30.10.2018, in confirming the judgment and conviction passed by the learned Judicial Magistrate No.I, Kulithurai in S.T.C.No.1506 of 2007 on 08.10.2012 are confirmed. The bail bond if any executed by the petitioner shall stand cancelled. The trial Court is directed to take steps to secure the accused according to law.

04.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn

P.DHANABAL, J.

Mrn

To

1.The Judge, Mahila(Fast Track Court), Nagercoil.

2.The Judicial Magistrate No.I, Kulithurai.

3.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl. R.C.(MD)No.185 of 2019

04.09.2023