



Crl.R.C(MD).No.284 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.R.C(MD).No.284 of 2019

Sivakumar

...Petitioner

Vs

Manjuladevi

... Respondent

PRAYER: Criminal Revision Case is filed under under Section 397 r/w. 401 Cr.P.C., to set aside the Judgment and conviction, dated 19.03.2019 passed by the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai in Crl.A.No.99 of 2018, by which confirming the Judgment and conviction order passed by the learned Judicial Magistrate / Fast Track Court, Pattukkottai, Thanjavur District in STC.No.47 of 2016, by its Judgment dated 21.08.2018 and acquit the petitioner / accused.

For Petitioner : Mr.S.Deenadhalayan

For Respondent No.1 : Mr.R.Maheswari

ORDER

This Criminal Revision case has been filed to set aside the Judgment



and conviction, dated 19.03.2019 passed by the learned III Additional District and Sessions Judge, Thanjavur @ Pattukkottai in Crl.A.No.99 of 2018, confirming the Judgment and conviction order passed by the learned Judicial Magistrate / Fast Track Court, Pattukkottai, Thanjavur District in STC.No.47 of 2016, dated 21.08.2018.

2. In the trial Court the respondent herein has filed a complaint under Section 138 of Negotiable Instruments Act as against this petitioner alleging that on 08.07.2015, the accused borrowed a sum of Rs.3,00,000/- as loan and for that he issued a cheque, dated 09.09.2015 for a sum of Rs. 3,00,000/- drawn on Lakshmi Vilas Bank, Madhukkur Branch. When the cheque was presented for collection on 09.10.2015, the cheque was returned with an endorsement as “in-sufficient funds”. Thereafter, the complainant issued a notice, dated 28.10.2015 and the same was acknowledged by the accused on 30.10.2015 and thereafter, on 03.12.2015, the accused replied with false averments. Hence, the complainant has filed a complaint under Section 138 of Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court, Pattukkottai and the same was numbered in S.T.C.No.47 of 2016 and thereafter, copies of the complaint and other documents were furnished to the accused and then, the trial



Court has questioned the accused and the substances of accusation was explained to the accused and the accused denied the charges and thereafter, before the trial Court, in order to prove the case PW.1 and PW.2 were examined and marked the documents Exs.P1 to P11. On the side of the defence, no one was examined and no documents were marked.

3. After completion of the complainant side evidence, the accused was examined under Section 313(i)(b) Cr.P.C., with regard to the incriminating evidence and materials and the same was denied by him.

4. After evaluating the oral and documentary evidence adduced on either side, the trial Court has convicted the accused for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo for Simple Imprisonment for one year and to pay a compensation of Rs. 3,00,000/- within a period of one month, in default, to undergo further period of three months Simple Imprisonment. As against the said Judgment and conviction, the accused filed an appeal before the III Additional District and Sessions Judge, Thanjavur @ Pattukkottai in C.A.No.99 of 2018, on various grounds. The learned III Additional District and Sessions Judge, Thanjavur dismissed the appeal through its



Judgment, dated 19.03.2019 confirming the Judgment and conviction of the trial Court.

5. Aggrieved over the said Judgment, the present Criminal Revision Case has been filed on the following grounds.

i) The Judgment and conviction of the trial Court as well as Appellate Court are contrary to law, weight of evidence and probabilities of the case.

ii) The Courts below failed to appreciate the evidence of PW.1 in a proper and perspective manner.

iii) The Courts below failed to appreciate that the complainant has not produced any documentary evidence to prove his source of income.

iv) The Courts below failed to appreciate the fact that there is no legally enforceable debt and the petitioner has raised probable defence by proving his defence.

v) The Courts below failed to appreciate the fact that the initial burden in favour of the defacto complainant as per Sections 118 and 139 of Negotiable Instruments Act has been successfully rebutted by the petitioner during the cross examination of PW.1.



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vi) The Courts below failed to appreciate the fact that the complaint has not obtained any security or documents, while giving such huge amount of Rs.3,00,000/- to the petitioner.

vii) The Courts below failed to appreciate the fact that the civil suit in O.S.No.295 of 2015 was filed by the complainant's mother as against the appellant for recovery of money and the same has been admitted by PW.1 in her cross examination. If that be so, it is highly improbable for the complainant again to lend money to the appellant and the same is unbelievable and un natural.

6. The learned counsel appearing for the petitioner would contend that the complainant has failed to prove the case and he has not proved the source of income and for that the trial Court failed to appreciate that already the petitioner had borrowed money from the mother of the appellant and due to the non payment, the said civil suit is pending. While the civil suit is pending, it is highly improbable to advance loan when already the petitioner was a defaulter. During the cross examination, also the defence theory of the petitioner would probabalise and thereby rebutted the presumption under Section 139 of Negotiable Instruments Act. The Courts below have not considered the above said aspects



properly and convicted the accused. Further, the date of borrowal of money and the date of cheque is one and the same. The petitioner has issued a reply notice denying the signature in the cheque and also source of income and already the civil suit is pending. But, the Courts below have not considered the above said aspects. PW.1 also admitted that already there was an enmity between the parties, thereby, there is no possibility to give money to the petitioner. Therefore, both the trial Court as well as the Appellate Court wrongly convicted the accused without considering the above said aspects. Therefore, the Criminal Revision Case is liable to be allowed.

7. The learned counsel appearing for the respondent would contend that the petitioner has borrowed a sum of Rs.3,00,000/- from the defacto complainant on 08.07.2015 and on the same date, he issued a post dated cheque, dated 09.09.2015 and the same was presented for collection and it was returned as “in-sufficient funds” and thereby, notice was issued on 28.10.2015. The respondent has issued a reply notice with false allegation on 03.12.2015 and thereafter, he filed a complaint. In order to prove the case of the petitioner, on the side of the petitioner, PW.1 was examined. Exs.P1 to P11 were marked and thereby, the complainant has discharged



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the burden to prove his complaint and there is a presumption in favour of the complainant under Section 139 of Negotiable Instruments Act. The accused failed to adduce any evidence and he denied the signature and issuance of the cheque and also projected the theory stating that the mother-in-law of the petitioner filed a civil suit as against the petitioner and the present cheque was stolen from the accused and then, filed this complaint. In order to prove that contention no evidence was adduced by the accused and thereby, he failed to rebut the presumption under Section 139 of the Negotiable Instruments Act. The Courts below have categorically discussed about the evidence adduced by the complainant and the presumption in favour of the defacto complainant under Section 139 of Negotiable Instruments Act and correctly convicted the accused. The appellate Court has also after giving the reasons dismissed the appeal and therefore, there are no infirmities found in the Judgments passed by the Courts below.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. Upon hearing of both sides and perusing of the records and



perusing of the Judgment of the Courts below, the point for consideration in this revision as follows:

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Whether the Judgment passed by the III Additional District and Sessions Judge, Thanjavur @ Pattukkottai in Crl.A.No.99 of 2018, confirming the Judgment and conviction order passed by the learned Judicial Magistrate / Fast Track Court, Pattukkottai, Thanjavur District in STC.No.47 of 2016, dated 21.08.2018 is sustainable in law and on facts?

10. In this case, the complainant filed a cheque complaint against the petitioner herein stating that he borrowed a sum of Rs.3,00,000/- on 08.07.2015 and he issued a post dated cheque, dated 09.09.2015 and the cheque was presented for collection and it was returned on 09.10.2015 and then, a notice was issued on 28.10.2015, after receipt of the said notice the accused has given a reply notice, dated 03.12.2015, but, he has not paid the cheque amount and thereby, the complainant filed a complaint. The contention of the petitioner is that already there was a money dispute between the defacto complainant's mother-in-law and the accused and that the cheques of the petitioners were stolen by the defacto complainant and misused the cheque by filing this complaint. The accused denied the



signature and issuance of the cheque and the cheque was not issued for legally enforceable debt.

11. In order to prove the contention of the complainant, he examined PW.1 and PW.2 and marked Exs.P1 to P11. PW.1 deposed about the borrowal of money by the accused and issuance of cheque and also the presentation of the cheque for collection and the issuance of the notice. PW.2 - Manager of the Lakshmi Vilas Bank deposed about the cheque issued to the accused and also he deposed that on the date of presentation of cheque for collection there was no sufficient fund in his accounts. Therefore, from the evidence of PW.1 and PW.2, they revealed that the cheque was issued by the accused and when the same was presented for collection the same was returned as in-sufficient funds. The contention of the accused is that he has not issued the cheque and the signature found in the cheque is not belongs to him and the cheque was stolen and the signature was forged. But in order to prove his contention he failed to examine any witness. The contention of the accused that the cheque was stolen and the same was mis-used by the complainant has to be proved with sufficient evidence, but the accused failed to examine any witnesses to prove his case. Further, the trial Court has also compared the



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signatures of the accused from the disputed cheque and the form which was available with the Bank Manager at the time of opening his account and the admitted sale deed. The said sale deed and the Exs.P9 and P10 are not for the contemporary period of issue of cheque. However, the accused has not taken any steps to compare the signature through expert. Further, the Bank has not returned the cheque on the ground of signature differs. Therefore, the trial Court after comparing the signature and taking into account of the evidence adduced on either side, came to the conclusion that the complainant has proved his case and the accused failed to rebut the presumption under Section 139 of Negotiable Instruments Act. The Appellate Court also after assigning reasons dismissed the appeal and confirmed the Judgment of the trial Court.

12. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Hon'ble Supreme Court reported in ***2006(3) SCC (cri) 30 in the case of (M.S.Narayana Menon Alias Mani Vs. State Bank of Kerala and another)*** and reported in ***2019(2) TNLR 1 (SC) in the case of (Basalingappa Vs. Mudibasappa)***. On perusal of the above said Judgment, it is clear that initial burden of proof is on accused to rebut the presumption by raising a probable defence and onus of proof on



accused is not as heavy as that of the prosecution and the complainant has to prove his financial capacity. In this case on hand, the accused had failed to rebut the presumption under Section 139 of Negotiable Instruments Act by adducing sufficient evidence and the complainant has proved his case through sufficient evidence, thereby, the above said case will not be helpful to decide the case in favour of the petitioner.

13. The learned counsel appearing for the respondent relied on the Judgment of the Hon'ble Apex Court reported in ***Laxmi Dyechem Pvt. Ltd., vs. State of Gujarath (2012(13) SCC 375)*** and the another Judgment of the Apex Court reported in ***K.N.Beena Vs. Muniappan and another (AIR 2001 Supreme Court page 2895)***. On a careful perusal of the above said Judgments, it is clear that burden of proving the cheque had not been issued for any debt or liability is on the accused, denial of averments in the reply by accused are not sufficient to shift the burden of proof on to the complainant and the accused has to prove in trial by leading cogent evidence that there was no debt or liability and dis honour of cheque on the ground of signature of drawer of cheque not matching with specimen signature available with the bank would also attract Section 138 of Negotiable Instruments Act. In the case on hand, there is no evidence



adduced by the accused to rebut the presumption Section 139 of Negotiable Instruments Act in favour of the accused.

14. Therefore, as discussed supra, this Court is of the opinion that there is no infirmity or perverse in the Judgment of the trial Court as well as the appellate Court. Therefore, this Court hold that the complainant has proved his case and the accused failed to prove his contention and therefore, this revision case has no merits and deserves to be dismissed. Accordingly, the same is hereby dismissed. Consequently, the connected Miscellaneous Petition is closed.

27.09.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1. The III Additional District and Sessions Judge, Thanjavur @
Pattukkottai
2. The Judicial Magistrate / Fast Track Court, Pattukkottai, Thanjavur
District



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P. DHANABAL,J.

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