



Crl. R.C.(MD)No.316 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.316 of 2019

and

Crl.M.P.(MD)No.4613 of 2019

P.M.Sundarraaj

.. Petitioner

Vs.

V.Ganesan

.. Respondent

Prayer : This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., to call for the records in C.A.No.82 of 2018 dated 05.04.2019 on the file of the II Additional District and Sessions Judge, Tiruchirappalli, confirming the judgment in S.T.C.No.340 of 2017 dated 06.06.2018 on the file of the learned Judicial Magistrate, Manapparai and duly set aside the judgment of the Courts below by acquitting the revision petitioner.

For Petitioner	: Mr.J.Jeyakumaran
For Respondent	: Mr.N.R.Balaji

ORDER

This petition has been filed by the petitioner to set aside the judgment and conviction passed in C.A.No.82 of 2018 dated 05.04.2019 on the file of the learned



Crl. R.C.(MD)No.316 of 2019

II Additional District and Sessions Judge, Tiruchirappalli, confirming the judgment in S.T.C.No.340 of 2017 dated 06.06.2018 on the file of the learned Judicial Magistrate, Manapparai. 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 three months simple imprisonment and to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation within one month by a judgment, dated 06.06.2018. As against the said conviction and judgment, the petitioner filed a criminal appeal in C.A.No.82 of 2018 and the same was dismissed by the learned II Additional District and Sessions Judge, Tiruchirappalli, by dismissing the appeal through its judgment dated 05.04.2019. Aggrieved by the said judgment, this present Criminal Revision Case is filed.

2.The case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- from the defacto complainant on 15.08.2016 and the accused issued a cheque dated 05.04.2017 in favour of the complainant for a sum of Rs.2,00,000/- drawn on Indian Overseas Bank, Vaiyampatti. When the cheque was presented for collection by the complainant through his banker, City Union Bank, Nadupatty, on 08.06.2017, the said cheque was returned as 'insufficient funds' on 09.06.2017 and the same was intimated to the complainant on 17.06.2017. The complainant issued a



Crl. R.C.(MD)No.316 of 2019

legal notice to the accused on 20.06.2017. The accused received the same but not issued any reply or settled the cheque amount. Hence, the complainant filed the complaint under Section 138 of Negotiable Instruments Act before the Judicial Magistrate Court, Manapparai. The learned Magistrate had taken cognizance in S.T.C.No.340 of 2017 for the offence under Section 138 of Negotiable Instruments Act. Thereafter, issued process to the accused and the accused was served copies under Section 207 of Cr.P.C., and then substance of the charge was explained to the accused and he denied charges.

3.The complainant had examined P.W.1 and marked Exs.P.1 to P.5 and on the side of the accused, D.W.1 and D.W.2 were examined and marked Exs.D.1 and D.2. 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 but 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 him to undergo three months simple imprisonment and imposed compensation of Rs.2,00,000/- (Rupees Two Lakhs only) by a judgment, dated 06.06.2018. Aggrieved by the said conviction and judgment, the



Crl. R.C.(MD)No.316 of 2019

petitioner filed a criminal appeal in C.A.No.82 of 2018 before the II Additional and Sessions Court, Tiruchirappalli. The appellate Court also confirmed the judgment and conviction of the trial Court and dismissed the appeal through its judgment dated 05.04.2019.

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

The judgments of the both the Courts below are against law, weight of evidence and all probabilities of case. The Courts below ought not to have believed the case of the respondent, since it is full of contradictions and infirmities. The Courts below have failed to consider the case of the petitioner, evidences and documents adduced on his side and wrongly convicted the petitioner. The Courts below failed to consider that the petitioner's father in law borrowed a sum of Rs. 50,000/- from the complainant and at that time, the cheque of the petitioner was given as security and the same was misused by the complainant and that the said loan was also discharged. But the trial Court has not considered the same and convicted the petitioner. The trial Court failed to consider that the cause of action narrated in the complaint and also in the evidence of P.W.1 was not proved by the complainant. The trial court failed to consider the evidences of D.W.1 and D.W.2 and also Ex.D1 and Ex.D2.



Crl. R.C.(MD)No.316 of 2019

WEB COPY

6.The learned counsel appearing for the petitioner would contend that the respondent has filed cheque case against the petitioner alleging that the petitioner borrowed a sum of Rs.2,00,000/- from him and thereafter, cheque was presented for collection, the cheque was dishonored and thereafter, issued notice to the petitioner and the notice was also received by the petitioner but not sent reply. But in fact the petitioner has not borrowed any amount from the respondent. Per contra the petitioner previously borrowed Rs.15,000/- from the complainant and the cheque was given as security and the same was misused. In order to prove the same on the defense side, they examined D.W.1 and D.W.2 who are Officers of TADCO and they deposed that the petitioner borrowed loan for a tune of Rs.4,00,000/- from the Government Subsidy. To that effect, Ex.D1 and Ex.D2 were marked but the trial Court failed to consider the same. Hence, the judgment of the Courts below are liable to be set aside by allowing this revision.

7.The learned counsel appearing for the respondent would contend that the petitioner has admitted the signature found in the cheque and thereby, he has to rebut the presumption under Section 139 of Negotiable Instruments Act. In order to rebut the presumption under Section 139 of Negotiable Instruments Act, no sufficient evidence was adduced. In order to prove the case of the complainant, he has



Crl. R.C.(MD)No.316 of 2019

examined P.W.1 and marked Exs.P1 to P5. Thereby, the case of complainant was proved and the presumption under Section 139 of Negotiable Instruments Act also in favour of the complainant. But the accused failed to rebut the presumption and thereby, the trial Court has correctly convicted the accused and awarded punishment. The appellate Court also after elaborate discussion dismissed the appeal and thereby, the revision is liable to be dismissed.

8.Upon hearing both sides, 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 II Additional District and Sessions Court, Tiruchirappalli in Crl.A.No.82 of 2018 on 05.04.2019, in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Manapparai in S.T.C.No.340 of 2017 on 06.06.2018 is sustainable according to law and facts.

Point:-

9.In this case, the complainant has filed cheque case as against the petitioner alleging that he borrowed a sum of Rs.2,00,000/- on 15.08.2016. Thereafter, he issued a post dated cheque dated 05.04.2017 for a sum of Rs. 2,00,000/-. When the same was presented for collection on 08.06.2017, the cheque



Crl. R.C.(MD)No.316 of 2019

was dishonored with a memo that 'insufficient funds'. Thereafter, the notice was issued to accused and after notice, the accused neither repaid the amount nor sent reply. Thereby, the complaint has been lodged before the learned Judicial Magistrate.

10.The contention of the petitioner is that he has not borrowed any amount from the complainant. Already his father in law borrowed amount and at that time, cheque was presented for security and the said loan was discharged. While so burden of proof is lies on the accused to prove that the cheque was given as security and not issued for legally enforceable debt. In order to prove the contention, the accused examined D.W.1 and D.W.2 and marked Ex.D1 and Ex.D2 and they stated about the loan obtained by accused from TADCO. On careful perusal of the evidences of D.W. 1 and D.W.2 and Ex.D1 and Ex.D2, they revealed that the petitioner obtained loan for a sum of Rs.4,00,000/- in the year 2013 through TADCO. The contention of the petitioner is that he has not borrowed the amount and the cheque was issued for security purpose for the loan obtained by his father in law. In order to prove that contention, no evidence was adduced. Per contra the defence side evidence shows that he obtained loan from TADCO in the year 2013 and no piece of evidence produced to prove that the cheque was issued for security purpose for the loan obtained by his father in law. Therefore, the petitioner side evidences no way helpful to decide the case in his favour and the same are totally irrelevant to this case.



Crl. R.C.(MD)No.316 of 2019

WEB COPY 11. On careful perusal of the document Ex.P1 and evidence of P.W.1, the accused borrowed the amount and issued cheque and he signed in the cheque and the accused also not denied the signature found in the cheque and issuance of the cheque. The initial burden of the complainant was discharged by him and the accused failed to rebut the presumption under Section 139 of Negotiable Instruments Act. Therefore, the complainant proved his case that the accused borrowed amount and issued cheque to discharge the said amount, but the accused failed to prove that the cheque was issued for security purpose. The trial Court as well as the appellate Court elaborately discussed about the evidence adduced on both sides and correctly fixed the burden on the side of the accused and he failed to discharge his burden and failed to rebut the presumption under Section 139 of Negotiable Instruments Act. Thereby, the Courts below rightly came to the conclusion by convicting the accused. There is no infirmity found in the judgment of the Courts below and this Court has no warrant to interfere with the judgments passed by the Courts below. Therefore as discussed above, this Court is of the opinion that this revision petition has no merits and deserved to be dismissed.

12. In the result, the Criminal Revision Petition is dismissed and the judgment and conviction passed by the learned II Additional District and Sessions



Crl. R.C.(MD)No.316 of 2019

Judge, Tiruchirappalli in Crl.A.No.82 of 2018 on 05.04.2019, in confirming the judgment and conviction passed by the learned Judicial Magistrate, Manapparai in S.T.C.No.340 of 2017 on 06.06.2018 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. Consequently, connected miscellaneous petition is closed.

26.09.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Mrn

To

1.The II Additional District and Sessions Judge, Tiruchirappalli.

2.The Judicial Magistrate, Manapparai.

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



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Crl. R.C.(MD)No.316 of 2019

P.DHANABAL, J.

Mrn

Crl. R.C.(MD)No.316 of 2019

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