BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.09.2023

Delivered On : 27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.349 of 2019
and
Crl.M.P.(MD)No.5247 of 2019

A.S.P.Raju .. Petitioner

Vs.

Mohandoss .. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records from the lower Courts and set aside the judgment of the Appellate Court passed by the learned Mahalir Fast Track Court, Nagercoil, Kanyakumari District in C.A.No.31 of 2011 dated 08.04.2019 confirming the judgment of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District in S.T.C.No.1918 of 2006 dated 15.02.2011.

For Petitioner : Mr.G.Cenil
For Respondent : Mr.S.M.A.Jinnah

ORDER

This petition has been filed by the petitioners to set aside the judgment and conviction passed by the Mahila Fast Track Court, Nagercoil in Crl.A.No.31 of 2011 on 08.04.2019, in confirming the judgment and conviction passed by the learned Judicial Magistrate No.I, Kuzhithurai in S.T.C.No.1918 of 2006 on 15.02.2011.

2.The petitioner herein is accused in S.T.C.No.1918 of 2006 and he was convicted and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the said judgment and conviction, the petitioner herein preferred an appeal in Crl.A.No.31 of 2011 before the Mahila Fast Track Court, Nagercoil and the Mahila Fast Track Court also confirmed the judgment and conviction passed in S.T.C.No.1918 of 2006, by dismissing the appeal by a judgment dated 08.04.2019.

3.The case of the complainant/respondent in the trial Court is that on 25.10.2005, the petitioner borrowed a sum of Rs.6,00,000/- from the respondent as loan and issued cheque dated 25.04.2006 drawn in favour of the complainant, Tamil Nadu Mercantile Bank, Arumanai Branch. When the cheque was presented for collection on 25.04.2006, the said cheque was returned unpaid as 'insufficient funds' on 04.05.2006. Thereafter, the respondent issued a notice dated 06.05.2006 and the same was received by the petitioner on 11.05.2006. Thereafter, the petitioner neither repaid the cheque amount nor issued reply. Thereby, the complainant filed a private complaint under Section 138 of Negotiable Instruments Act. The trial Court has taken cognizance for the offence under Sections 138 of Negotiable Instruments Act and issued summons and on summons, the petitioner/accused appeared before the trial Court and thereafter, the copies of the records were furnished to the petitioner under Section 207 of Cr.P.C. Thereafter substance of charge was explained to the petitioner and he denied the charges.

4.The complainant had examined P.W.1 to P.W.3 and marked Exs.P.1 to P.11 and on the side of the accused, D.W.1 was examined and marked Exs.D.1 to D.4. After examination of defacto complainant witness, the accused was examined under Section 313(1)(b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

5.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 one year simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment by a judgment, dated 15.02.2011. Aggrieved by the said conviction and judgment, the petitioner filed a criminal appeal in C.A.No.31 of 2011 before the Mahalir Fast Track

Court, Nagercoil. The appellate Court also confirmed the judgment and conviction and dismissed the appeal through its judgment dated 08.04.2019.

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

The judgment and conviction of the Courts below is against law, weight of evidence and all probabilities of the case. The Courts below failed to consider that the respondent/complainant not proved the source of income of Rs.6 Lakhs. The Courts below failed to consider that the three cheque leaves given to the respondent herein in the year 2002 for the loan amount a sum of Rs.1 Lakh. The learned Judge failed to consider that the loan received from the respondent in the year 2002 and the same was repaid through Ex.D1. The Courts below failed to consider that the vital documents – Ex.D2, the cheques issued by the Bank in the year 2000. Both the Courts below have erroneously shifted the onus on the petitioner/accused, when the respondent/complainant had not proved his case in a manner known to law. The appellate court as well as the trial Court failed to note that the prosecution for an offence under Section 138 of Negotiable Instruments Act would arise only in the case of existence of a legally enforceable debt and not otherwise. The presumption regarding the presence of legally enforceable debt is rebuttable and it is the duty of the respondent to establish that there was a loan transaction and the cheque mentioned amount was actually borrowed.

7.The learned counsel appearing for the petitioner would contend that the respondent/complainant has filed cheque case against the petitioner alleged that he borrowed a sum of Rs.6,00,000/- on 25.10.2005. For that amount, the petitioner issued cheque dated 25.04.2006. When the same was presented for collection, it was returned as 'insufficient funds' and thereafter, he issued notice. After receipt of notice, the petitioner has not repaid the amount. Hence, he filed the complaint. In fact the petitioner borrowed a sum of Rs.1,00,000/- from the respondent on 20.01.2002. For that he had given three cheques of Tamil Nadu Mercantile Bank. Among three cheques, first cheque alone was filled for Rs.1,00,000/- and other two cheques were unfilled cheques. The signature found in the cheque is that of the petitioner and the contents found in the cheque were not written by him. While so, the respondent/complainant misused one of the above cheques and filed this false complaint. The petitioner already repaid the said loan of Rs.1,00,000/- and in the year 2003 he paid a sum of Rs.2,00,000/- by sale of his land and remaining Rs. 50,000/- was paid through cheque State bank of Thiruvancore, which was marked as Ex.D1. Thereby, he settled the entire amount towards principal and interest. While borrowing the amount, the petitioner handed over three cheques to the respondent/complainant for security purpose. When the same were asked to return, the complainant represented that the cheques were misplaced. Believing the words of the respondent/complainant, he has not taken any action. Now the respondent/complainant has filed the case by misusing the cheques which were given for the security for the loan earlier borrowed by him which was also settled. Therefore, the trial Court and the appellate Court had not considered the defence side documents and witnesses. Based on the complainant side witnesses, the trial Court wrongly convicted the accused. Therefore, the revision petition is liable to be allowed by setting aside the judgment of the Courts below.

8.The learned counsel appearing for the respondent contended that the petitioner borrowed a sum of Rs.6,00,000/- on 25.10.2005 and for that, he issued a cheque dated 25.04.2006. When the same was presented for collection, it was returned unpaid as 'insufficient funds'. Thereafter the respondent issued legal notice on 06.05.2006 and the same was acknowledged by the petitioner on 11.05.2005. He neither repaid nor settled the amount. Thereby, he filed complaint and the same was taken on file as S.T.C.No.1918 of 2006. Thereafter, on the side of the petitioner, he himself examined as D.W.1 and marked Exs.D1 to D4. The respondent has examined himself as P.W.1 and Bank Managers examined as P.W.2 and P.W.3 marked Exs.P1 to P11. The accused admitted the signature found in the cheque. He has to explain as to how the cheque was came to the hands of the accused. But the theory of defence is that he borrowed a sum of Rs.1,00,000/- and the same was settled and at the time of borrowal, he issued three cheque leaves for security and the same was not returned by the respondent/complainant has not been proved by the petitioner and thereby, the trial Court after considering both side evidence and documents, correctly held that the respondent/complainant has proved the case and convicted the accused for the offence under Section 138 of Negotiable Instruments Act and the appellate Court also after elaborate discussion and then dismissed the appeal by confirming the judgment of the trial Court and therefore, the grounds raised by the petitioner were already taken as defence before the trial Court and the same was answered by the trial Court and the appellate Court and hence, this revision case is liable to be dismissed.

9.Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of Courts below, the points for determination in this petition is whether the judgment of the Mahila Fast Track Court, Nagercoil, Kanyakumari District in Crl.A.No.31 of 2011 on 08.04.2019, in confirming the conviction and sentence imposed by the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District in S.T.C.No.1918 of 2006 on 15.02.2011 are sustainable according to law and facts.

Point:-

10.The case of the complainant is that the accused borrowed a sum of Rs. 6,00,000/- on 25.10.2005 and then he issued a cheque dated 25.04.2006 Tamil Nadu Mercantile Bank, Arunmani for a sum of Rs.6,00,000/-. The same was presented for collection and the cheque was returned as 'insufficient funds'. Thereafter, notice was issued to the accused on 06.05.2006 and the same was acknowledged by the accused on 11.05.2006. After receipt of notice, no reply was sent and not repaid the amount. Thereby, the complaint has been filed.

11.According to the accused, he already borrowed a sum of Rs.1,00,000./- from the complainant on 20.01.2002 and at the time of borrowal of amount, he issued three cheques for security. Among three cheques, first cheque was filled up for Rs.1,00,000/- and two blank cheques were given to the complainant. Thereafter, the said amount was settled. A sum of Rs.2,00,000/- was settled by sale of property, and a sum of Rs.50,000/- was paid through cheque Ex.D2.

12.In order to prove the case of the complainant/respondent, he examined himself as P.W.1 before the trial Court and he deposed about the borrowal of loan and issuance of cheque and presentation for collection, return of cheque unpaid as 'insufficient funds' and also issuance of notice. P.W. 2 and P.W.3 also deposed about the presentation of cheque for collection and return of the cheque. Therefore, the complainant has discharged his burden and proved the cheque.

13.More over the accused himself admitted the signature and issuance of cheque but the contention of the accused is that he issued cheque for security purpose and he already borrowed a sum of Rs.1,00,000/- from the complainant and the same was settled. While settling the amount, when he was asked about the return of blank cheques, the complainant represented that the cheques were misplaced. In order to prove the theory of defence, he himself examined as D.W.1 and he deposed about the borrowal of amount and repayment of the amount. But the petitioner has not issued any reply for the notice issued by the complainant/respondent. Further there is no explanation as to why three cheque leaves were given for the amount of Rs.1,00,000/-. According to the petitioner, one cheque was issued by filling up Rs. 1,00,000/- and that apart, other two blank cheques were issued. There is no explanation as to why two blank cheques and one filled cheque for Rs.1,00,000/- were given for the borrowal of Rs.1,00,000/-. Further the loan amount was settled in the year 2003 itself, then what steps were taken by the petitioner to return back the cheques, there is no answer from the petitioner.

14.The aforesaid theory of defence is unbelievable and the trial Court also in the judgment, elaborately discussed that when the amount was settled in the year 2003 itself, then the petitioner/accused had not taken any steps to get back the cheque leaves for more than two years. Further the trial Court also discussed about Ex.D3 and correctly disbelieved the defence theory. Further the trial Court has also discussed about the presumption under Section 139 of Negotiable Instruments Act and correctly analyzed the evidences and convicted the accused. The appellate court also in the judgment elaborately discussed about the borrowal of amount by the accused and repayment of the amount and set up by the defence theory and correctly confirmed the judgment of the trial Court. Once the accused admitted the signature of the cheque, he has to prove his defence theory but he miserably failed to prove the theory and failed to rebut the presumption under Section 139 of Negotiable Instruments Act. The judgments of trial Court as well as the appellate Court are reasoned and very well in accordance with law, thereby, no warrant to interfere with the judgments of Courts below. Therefore as discussed above, this Court is of the opinion that the Criminal Revision Case has no merits and deserved to be dismissed.

15.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.31 of 2011 on 08.04.2019, in confirming the judgment and conviction passed by the learned Judicial Magistrate No.I, Kuzhithurai in S.T.C.No.1918 of 2006 on 15.02.2011are 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.

27.09.2023

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

To

1.The Judge, Mahalir Fast Track Court, Nagercoil, Kanyakumari District.

2.The Judicial Magistrate No.I, Kuzhithurai.

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

P.DHANABAL, J.

Mrn

Crl. R.C.(MD)No.349 of 2019

27.09.2023