BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 20.07.2023

Delivered On : 22.08.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.354 of 2019

Selvakumar .. Petitioner

Vs.

P.Lakshmanan .. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to the order dated 21.02.2019 made in C.A.No.106 of 2017 on the file of the I Additional District and Sessions Judge, Tiruchirappalli confirmed the order dated 21.09.2017 made in C.C.No.225 of 2016 on the file of the Judicial Magistrate No.I, Tiruchirappalli and set aside the same.

For Petitioner : Mr.S.Vellaichamy
For Respondent : Mr.S.T.Gopinath

ORDER

This petition has been filed by the petitioner to set aside the judgment and conviction passed by the I Additional District and Sessions Court, Tiruchirappalli in Crl.A.No.106 of 2017 on 21.02.2019, in confirming the judgment of acquittal passed by the learned Judicial Magistrate No.I, Tiruchirappalli in C.C.No.225 of 2016 on

21.09.2017. In the trial Court, the petitioner herein filed a complaint as against the respondent herein under Section 138 Negotiable Instruments Act. The said complaint has been taken on file in C.C.No.225 of 2016 on the file of the learned Judicial Magistrate No.I, Trichy and the same was dismissed and the accused was acquitted. As against the judgment, the petitioner herein had preferred a criminal appeal in Crl.A.No.106 of 2017 on the file of the learned I Additional District and Sessions Judge, Tiruchirappalli and the appeal was also dismissed through judgment dated 21.02.2019. Aggrieved by the said judgment, this present Criminal Revision Case is filed.

2.The case of the defacto complainant in trial Court is that the respondent borrowed a sum of Rs.1,00,000/- on 06.03.007 and another sum of Rs.1,00,000/- on 08.05.2007, from him, promising to repay the same within one year. The accused did not repay the same and was evading. On 10.04.2015, the accused issued a cheque dated 13.04.2015 for Rs.2,00,000/- on Canara bank, Theppakulam Branch in favour of the defacto complainant. When the cheque was presented for collection, the same was returned as 'kindly contact the drawer/drawee bank and please present again'. This was intimated to the defacto complainant on 15.04.2015. The defacto complainant issued a legal notice on 19.04.2015. Hence, 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 copy 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.

3.Thereby, the defacto complainant had examined P.W.1 and P.W.2 and marked Exs.P.1 to P.4 and on the side of the accused, no one was examined and no document was marked. After completion of defacto complainant evidences, 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.

4.Upon perusing the oral and documentary evidence, the trial Court dismissed the complaint by a judgment, dated 21.09.2017. Aggrieved by which, the petitioner filed a criminal appeal in C.A.No.106 of 2017 before the learned I Additional District and Sessions Judge, Tiruchirappalli. The appellate Court also confirmed the judgment of the trial Court and dismissed the appeal through its judgment dated 21.02.2019.

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

The judgments of the Courts below are against law, weight of evidence and all probabilities of the case. Both the lower Courts erred in holding that the debt is time barred and not legally enforceable. The Courts below ought not to have acquitted the accused in the light of the fact that the accused did not discharge his initial burden against statutory presumption. The Courts below failed to note that the accused has not projected a defence that the cheque issued in the year 2015 is not for the borrowal of amount in the year 2007 and also the accused has failed to give any reason for what purpose the cheque was given. Since the accused has not given any evidence before the trial Court to rebut the presumption, under such circumstance the presumption that the cheque was given only to discharge the debt.

6.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 I Additional District and Sessions Court, Trichirappalli in Crl.A.No.106 of 2017 on 21.02.2019, in confirming the acquittal judgment passed by the learned Judicial Magistrate No.I, Trichirappalli in C.C.No. 225 of 2016 on 21.09.2017 is sustainable according to law and facts.

7.According to the complaint, the accused herein borrowed a sum of Rs.

1,00,000/- from the complainant on 06.03.2007 and again a sum of Rs.1,00,000/- on 08.05.2007 for personal reasons. He promised to repay the same within a period of one year. Thereafter, the same was not repaid by the accused. The complainant demanded the accused to repay the same and he evaded from repaying the said amount. On 10.04.2015, the complainant approached the accused and the accused also has given a cheque dated 13.04.2015 for a sum of Rs.2,00,000/- in favour of the complainant and the same was presented for collection before SBI bank, Chinathamani Branch but it was dishonoured. On 19.04.2015, the defacto complainant issued notice calling upon the accused to pay the same. The cheque notice also acknowledged by the respondent on 22.04.2015. Thereafter no reply was sent by the accused. Therefore, the accused committed an offence under Section 138 of Negotiable Instruments Act. Thereafter, the accused appeared through his counsel and contested the case.

8.In the trial Court, on the side of the defacto complainant, P.W.1 and P.W. 2 were examined and marked Exs.P.1 to P.4 and on the side of the petitioner, no one was examined and no document was marked. After analyzing the oral and documentary evidence, the trial Court acquitted the accused through judgment dated 21.12.2019. The trial Court discussed about the liability of the accused and acquitted the accused on the ground that the cheque was issued for a time barred debt and not issued for any legally enforceable debt. Therefore, there is no presumption under Section 118 and 139 of Negotiable Instruments Act. The loan was borrowed in the year 2007 and after three years i.e., 2010, it was time barred and not legally enforceable and cheque was issued dated 13.04.2015. The above said cheque was not issued for a legally enforceable debt. The main ground of the appellant is that the accused has not denied the signature and issuance of the cheque and thereby, it is for the accused to prove that for which purpose the cheque was issued and burden would not lie on the defacto complainant. Though the accused had not denied his signature found in the cheque and issuance of cheque to the complainant, the primary duty of the complainant is to prove the cheque was issued for legally enforceable debt. Even though the signature and issuance of cheque are admitted, still the accused can rebut the presumption by preponderance of probabilities. It is admitted fact that the loan was borrowed in the year 2007 and the cheque was issued in the year 2015. Even for acknowledgement for the debt, it shall be within the limitation period. Since the borrowal of debt in 2007, the limitation period ended in the year 2010 within the period of 3 years. The acknowledgement had to be made. But in this case, it is admitted that no cheque was issued within three years from the date of borrowal. Hence, the debt is time barred and not legally enforceable by law. Therefore, presumption under Section 139 of Negotiable Instruments Act would not arise in favour of the complaint.

9.The Courts below have categorically stated in the judgment that the cheque issued was for the time barred debt and the said debt was not legally enforceable debt, thereby acquitted the accused.

10.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***S.Natarajan v. Sama Dharman and another*** reported in ***(2021) 6 Supreme Court Cases 423***, wherein the Hon'ble Supreme Court in para nos.8 and 9 held as follows:-

> *"7. In this connection, we may usefully refer to a judgment of this Court in A.V.Murthy v. B.S. Nagabasavanna, 2002 2 SCC 642 where the accused had alleged that the cheque issued by him in favour of the complainant in respect of sum advanced to the accused by the complainant four years ago was dishonoured by the Bank for the reasons account closed. The Magistrate had issued summons to the accused. The Sessions Court quashed the proceedings on the ground that the alleged debt was barred by limitation at the time of issuance of cheque and, therefore, there was no legally enforceable debt or liability against the accused under the Explanation to Section 138 of the NI Act and, therefore, the complaint was not maintainable. While dealing with the challenge to this order, this Court observed that under Section HC-NIC Page 8 of 11 Created On Wed Aug 16 01:36:16 IST 2017 R/CR.MA/32287/2016 JUDGMENT 118 of the NI Act, there is a presumption that until the contrary is proved, every negotiable was*

drawn for consideration. This Court further observed that Section 139 of the NI Act specifically notes that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the NI Act for discharge, in whole or in part, of any debt or other liability. This Court further observed that under Sub-section (3) of the Section 25 of the Contract Act, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract. Referring to the facts before it, this Court observed that the complainant therein had submitted his balance sheet, prepared for every year subsequent to the loan advanced by the complainant and had shown the amount as deposits from friends. This Court noticed that the relevant balance sheet is also produced in the Court. This Court observed that if the amount borrowed by the accused therein is shown in the balance sheet, it may amount to acknowledgment and the creditor might have a fresh period of limitation from the date on which the acknowledgment was made. After highlighting further facts of the case, this Court held that at this stage of proceedings, to say that the cheque drawn by the accused was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous. In the circumstances, this court set aside the order passed by the High Court upholding the Sessions Courts order quashing the entire proceedings on the ground that the debt or liability is barred by limitation and, hence, the complaint was not maintainable. It is, therefore, clear that the contention urged by the Appellant herein can *be examined only during trial since it involves examination of facts.*

(8) In Rangappa v. Sri Mohan, 2010 11 SCC 441, the legal question before this Court pertained to the proper interpretation of Section 139 of the NI HC-NIC Page 9 of 11 Created On Wed Aug 16 01:36:16 IST 2017 R/CR.MA/32287/2016 JUDGMENT Act which shifts the burden of proof on to the accused in cheque bouncing cases. This Court observed that the presumption mandated by Section 139 of the NI Act includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. This Court further observed that Section 139 of the NI Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. This Court clarified that the reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. This Court, then, explained the manner in which this statutory presumption can be rebutted. Thus, in cheque bouncing cases, the initial presumption incorporated in Section 139 of the NI Act favours the complainant and the accused can rebut the said presumption and discharge the reverse onus by adducing evidence. "

11.On careful reading of the said judgments, they will not be applicable to the present facts of the case because in this case, the cheque was issued for the time barred debt and the said debt is not legally enforceable debt.

12.The learned counsel appearing for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of (I) ***A.V.Murthy v. B.S.Nagabasavanna*** in ***Appeal Case No.206 of 2002***, wherein this Hon'ble Supreme Court reads as follows:

> *“This is not a case where the cheque was drawn in respect of a debt or liability, which was completely barred from being enforced under law. If for example, the cheque was drawn in respect of a debt or liability payable under a wagering contract, it could have been said that that debt or liability is not legally enforceable as it is a claim, which is prohibited under law. This case is not a case of that type. But we are certain that at this stage of the proceedings, to say that the cheque drawn by the respondent was in respect of a debt or liability, which was not legally enforceable, was clearly illegal and erroneous.“*

13.On careful reading of the above judgments, it is clear that the cheque was drawn by the accused was in respect of a debt or liability, which was not legally enforceable was clearly illegal and erroneous. If the cheque was issued only in respect of time barred, it cannot be stated that offence is committed under Section 138 of Negotiable Instruments Act. In the case on hand also, the cheque was issued for time barred debt and thereby the said case laws are squarely applicable to the present facts of the case.

14.Therefore, as stated above, the presumption was rebutted by the accused. The petitioner also admitted that the cheque issued was for the time barred debt. Since the cheque was not issued for legally enforceable debt, the Courts below rightly acquitted the accused and there is no infirmity found in the judgments of the Courts below.

15.In view of the above cited judgments and discussed supra, the Criminal Revision Case has no merits and deserves to be dismissed Accordingly, this Criminal Revision Case is dismissed and the judgment passed by the I Additional District and Sessions Court, Tiruchirappalli in Crl.A.No.106 of 2017 on 21.02.2019, in confirming the judgment of acquittal passed by the learned Judicial Magistrate No.I, Tiruchirappalli in C.C.No.225 of 2016 on 21.09.2017 are confirmed.

22.08.2023

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

P.DHANABAL, J.

Mrn

To

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

2.The Judicial Magistrate No.I, Tiruchirappalli.

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

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