BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED : 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)Nos.70 and 72 of 2019
and
Crl.M.P.(MD)Nos.1497, 1498, 1511 and 1512 of 2019

Crl.R.C.(MD)No.70 of 2019

Kumarasamy ... Petitioner/Appellant/Respondent

Vs.

M/s.ARA Investments & Finance Private Ltd.,
Rep. by its Director,
N.Vellaiyan, A-16,
Main Road, 11th Cross,
Thillai Nagar, Trichy-18
... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the order issued by the I – Additional District and Sessions Judge, Trichy, in C.A.No.48 of 2007, dated 20.12.2018, by confirming the order of conviction sentence passed by the Judicial Magistrate No.IV, Trichy, in C.C.No.38 of 2009, dated 21.03.2007 and to set aside the same.

Crl.R.C.(MD)No.70 of 2019

Kumarasamy ... Petitioner/Appellant/Respondent

Vs.

M/s.ARA Investments & Finance Privat Ltd.,
Rep. by its Director,
N.Vellaiyan, A-16, Main Road, 11th Cross,
Thillai Nagar, Trichy-18

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records pertaining to the order issued by the I – Additional District and Sessions Judge, Trichy, in C.A.No.47 of 2007, dated 20.12.2018, by confirming the order of conviction sentence passed by the Judicial Magistrate No.IV, Trichy, in C.C.No.37 of 2009, dated 21.03.2007 and to set aside the same.

(In both Crl.R.C.)

For Petitioner : Mr.G.Karuppasamy Pandian
for Ms.R.Yamuna

For Respondent : Mr.M.Subash Babu, Senior Counsel
for Mr.L.Siva

COMMON ORDER

These Criminal Revision Petitions have been filed to set aside the Judgment passed by the I – Additional District and Sessions Judge, Trichy, in C.A.Nos.47 and 48 of 2007, dated 20.12.2018, by confirming the order of conviction and sentence passed by the Judicial Magistrate No.IV, Trichy, in C.C.Nos.37 and 38 of 2009, dated 21.03.2007.

2. The petitioner in both the revisions is the accused. The complaint was lodged by the respondent for the offence under Section 138 of the N.I Act.

3.The crux of the complaint is that the respondent is doing business in Finance. The petitioner is a Chartered Accountant and he used to borrow money for the purpose of his business in Real Estate. Accordingly, from 06.03.1996 till 18.03.2000, on various dates, the petitioner had borrowed a sum of Rs.1,11,50,000/- and he agreed to pay interest at the rate of 24% per annum. As agreed by him, the petitioner paid interest till 18.03.2000 and thereafter, he failed to pay neither interest nor principal account. In fact, while borrowing the loan, the petitioner executed a promissory note to deposit title deeds and also created mortgage by depositing title deeds in respect of the properties. While being so, on 20.12.2001, the respondent demanded for repayment and the petitioner issued two cheques for a sum of Rs.10,00,000/- and Rs.5,00,000/- respectively. The cheques were presented for collection, which were returned as "insufficient funds". After issuance of statutory notice, the respondent initiated proceedings under Section 138 of the N.I. Act.

4. On the side of the respondent, he had examined himself as P.W.1 to P.W.3 and exhibited 20 documents as Ex.P.1 to Ex.P.20. On the side of the petitioner, 2 witnesses were examined as D.W.1 and D.W.2 and exhibited 18 documents as Ex.D1 to D18.

5. On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offence under Section 138 of the N.I Act and sentenced him to undergo one year Simple Imprisonment in both the cases in C.C.Nos.37 and 38 of 2002. Aggrieved by the same, the petitioner preferred appeals in C.A.Nos.47 and 48 of 2007 on the file of

the I – Additional District and Sessions Judge, Trichy and the Appellate Court confirmed the conviction and dismissed the Appeals, against which, the petitioner / accused had filed these petitions.

6.The learned counsel for the petitioner would submit that the alleged cheques were issued as security, at the time of borrowal of loan. In fact the cheques are printed form and the year is mentioned as 1990. It means that the cheques of the year 19th Century, which was issued for security purpose. It was not issued for any legally enforcable debt. Even according to the respondent, the petitioner allegedly borrowed loan from 06.03.1996 till 18.03.2000 to the tune of Rs. 1,11,50,000/-, at the time of borrowal of loan, the petitioner had executed pronote, confirmation letter and deposit of title deeds as security purpose. The petitioner also executed cheques without mentioning the date for a sum of Rs.10,00,000/- and Rs.5,00,000/-. Both the cheques related to the borrowal, dated 16.03.1996 and 21.03.1996. Therefore, even assuming that both the cheques were issued for the said borrowal, both were time barred and as such, the cheques were not issued for legally enforceable debt. He would further submit that both the cheques were not filled with any date. It was of the year 19th Century and it has been filled up by the respondent and was presented for collection. As per Ex.D.16, the total transaction between the petitioner and the respondent was only to the tune of Rs.64,13,408/- not to the tune of Rs.1,11,50,000/-. Though the respondent stated the total borrowal to the tune of Rs.1,11,50,000/-, it was substantiated by the respondent by any documents. Therefore, both the cheques were issued only for security purpose and not for any legally enforceable debt. In support of this contention, he also relied upon the Judgment of this Court in Crl.R.C.No.339 of 2011, in the case of V.Jothi Ramalingam V. Gunaseka, dated 07.03.2019, in which, this Court held that the blank cheques signed by one of the mortgagees cannot be construed to be issued to the complainant, permitted to be filled up and make it valid document under Section 20 of the N.I. Act. When the enforceable debt itself is questioned by the accused and probablised his defence presumption under Section 139 of the N.I. Act. Therefore, fixing the criminal liability based on the cheques in possession of the complainant cannot be safe.

7. Per contra, the learned Senior Counsel for the respondent would submit that the petitioner himself categorically admitted the entire borrowal of loan. In fact,the petitioner had taken three defence before the

trial Court, viz., (i) that the petitioner categorically admits the borrowal between the petitioner and the respondent (ii) that the petitioner completed the transaction even in the year 1996 itself and thereafter, he never borrowed any amount (iii) the petitioner issued the cheques, which were issued only for security purpose and not for any legal enforceable debt. He would further submit that though even assuming that cheques were issued for security purpose on the date of presentation of cheques, there was debt from the petitioner and as such, it can be very well filled up by the complainant to release the balance amount. He also related upon the judgment in support of his contention, ***High Court of Kerala at Ernakulam***, in the case of ***Ashok Kumar V. Sankarakutty Pillai (RFA.No.390 of 2003)***.

8. He also relied upon the another judgment of this Court reported in ***2023-1-LW(crl.)-15*** in the case of ***R.Tamilarasa V. T.P.Rameshkumar,*** with regard to barred by limitation gets reversed. The relevant paragraph, which reads as follows:-

> *"19. Though, the petitioner issued reply notice which was marked as Ex.P6, he failed to whisper anything about the payment stopped by him and about his defence. He simply denied the allegation*

> *and issued reply notice. In support of his contention, he failed to examine any witness and failed to produce any material evidence to that effect. In so far as, the source of income is concerned, the petitioner failed to rebut the same by probable defence."*

9. Heard the learned counsel on either side and also perused the documents available on record.

10. The petitioner is the accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the N.I.Act. A perusal of the complaint revealed that the petitioner borrowed a sum of Rs.1,11,50,000/- from 06.03.1996 till 18.03.2000. He agreed to pay interest at the rate of 24% per annum and he had so far paid interest only till 18.03.2000 and thereafter, he failed to pay any interest and also the principal amount. On repeated demands, the petitioner issued two cheques for a sum of Rs.10,00,000/- and Rs.5,00,000/-. Both the cheques were presented for collection and were returned for the reason "insufficient funds" and after causing statutory notice, the respondent filed the complaints. Statutory notices were marked as Ex.P7 and Ex.P9 respectively. On receipt of the same, the petitioner issued reply notices,

which were marked as Ex.P9 and Ex.P11 respectively. On perusal of Ex.P9 and Ex.P11 revealed that the cheques were issued for security purpose and not for any legal enforceable debt. Cheques were marked as Ex.P4 and Ex.P6, which were issued for a sum of Rs.5,00,000/- and Rs. 10,00,000/- respectively signed by the petitioner and filled up by the petitioner, except the date of the cheques. Though it was printed as 19th Century, it meant to said that for 19th Century, it was filled up by the respondent as 03.12.2001. A perusal of the complaint revealed that the said cheques were issued for the transaction, dated 02.09.2009, on which date, the petitioner borrowed a sum of Rs.9,43,200/-. In order to repay the said amount, the cheques were issued by the petitioner. It is also evident from the deposition of P.W.1, that on 30.04.1999, the petitioner borrowed a sum of Rs.6,45,000/- and he also executed pronote on the date of borrowal. That apart, the petitioner issued confirmation letters, which were marked as Ex.P3 and P.5, the pronote-Ex.P4. Further, he deposed that on 02.09.1999, he borrowed another sum of Rs.9,43,200/- on the same date, he executed pronote, which was marked as Ex.P6. On the same date, he also issued confirmation letter, which was marked as Ex.P5. In order to repay the amount in those transaction, issued two cheques for a sum of Rs.10,00,000/- and Rs.5,00,000/-. Though the petitioner had taken specific stand that both the cheques were issued only for security purpose, the petitioner failed to substantiate the same by any probable defence. Both the cheques were issued for the said transaction, dated 30.04.1999 and 02.09.1999. Therefore, it cannot be said both the cheques issued were barred by limitation. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand.

11. Further, the learned counsel for the petitioner categorically deposed that he is a Law Graduate and also he completed F.C.A and is practicing as a Chartered Accountant. He borrowed money on various dates from the respondent from the year 1983 to 1996. He completed all the loan transactions and after 01.04.1996, he did not borrow any amount, whereas, his reply and other statement revealed that he borrowed loan only from 16.03.1996 till 18.03.2000. Even assuming that the cheques were issued for security purpose at the time of presentation of cheques, there was legally enforceable debt and as such, the presentation of cheques are valid document, under Section 25 of the N.I. Act.

12. Both the cheques were filled with date by the respondent. His specific stand taken by the petitioner is that both the cheques were issued for security purpose and as such, he could not have been presented for the legally enforceable debt. It is very frank that the cheques were issued as security purpose and that in the event of non payment security is to be enforceable debt. Cheques even for security purpose would amount to enforcable debt on presentation when payment is due. Therefore, the petitioner failed to rebut the presumption as contemplated under Sections 118 and 139 of the N.I Act. Hence, both the Courts below rightly convicted the petitioner under Section 138 of the N.I Act. Hence, this Court finds no infirmity or illegality in the Judgment of conviction and sentence imposed by the Courts below and the revisions are liable to be dismissed.

13. Accordingly, these Criminal Revision Cases are dismissed.

14. However, the learned counsel for the petitioner would submit that if the petitioner settled the cheque amount, sentence may be set aside.

15. Considering the said request made by the learned counsel for the petitioner, if the petitioner deposits the entire cheque amount to the credit of C.C.Nos.37 and 38 of 2009 on the file of the Judicial Magistrate No.IV, Trichy, on or before **21.08.2023**, the sentence alone imposed by the Courts below are hereby set aside. On such deposit being made, the respondent-complainant is permitted to withdraw the same. Consequently, connected miscellaneous petitions are closed.

26.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
Ls
Note : Issue order copy on 27.06.2023

To

1.The Judicial Magistrate No.IV,
Trichy

2.The I – Additional District and Sessions Judge,
Trichy.

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

G.K.ILANTHIRAIYAN, J.

Ls

Order made in
Crl.R.C(MD)Nos.70 and 72 of 2019
and
Crl.M.P.(MD)Nos.1934 and 3479 of 2018

26.06.2023