BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.09.2023

Pronounced on : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL REVISION PETITION(MD)No.596 of 2019

A.Murugan .. Petitioner

Vs.

S.Mohanraj ...Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 R/w 401 of Cr.P.C to revise the order of the conviction and sentence imposed on the Petitioner by means of the judgment of the Learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur made in C.A.No.113 of 2013 dated 24.10.2018 of confirming the conviction and sentence as imposed on him by means of judgment dated 24.07.2013 made in C.C.No. 4336 of 2011 passed by the Learned Judicial Magistrate, Sivakasi, Virudhunagar District of directing the Petitioner/ Appellant /Accused to undergo one year Simple Imprisonment along with a compensation of Rs.30 lakhs and in default to undergo another period of 6 months Simple Imprisonment forthwith for having committed the offence U/S 138 of

Negotiable Instrument Act.

For Petitioner : Mr.S.Palani Velayutham

For Respondent : Mr. S.Ramasamy

ORDER

This Criminal Revision petition has been filed by the petitioner as against the judgment of conviction passed in C.A.No.113 of 2013 on the file of the Court of Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur dated 24.10.2018 by confirming the judgment of conviction passed by the Learned Judicial Magistrate, Sivakasi, Virudhunagar District in CC.No.4336 of 2011 dated 24.07.2013.

2. The complainant/respondent herein filed a complaint as against the petitioner under Section 138 of Negotiable Instrument Act. Where the Trial Court has convicted the accused/petitioner under Section 138 of Negotiable Instrument Act and imposed the sentence of one year of Simple Imprisonment and to pay a compensation of Rs.30,00,000/- in default to undergo Simple Imprisonment for 6 months.

3. As against the above said judgment of conviction, the accused/petitioner has preferred an appeal before the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, in CA.No.113 of 2013. The Appellate Court also after hearing both the sides and perusing the materials available on record, dismissed the appeal by confirming the judgment of conviction passed by the Trial Court.

4. Aggrieved by the above said concurrent judgment of conviction, the present Criminal Revision Petition has been filed by the accused/petitioner.

5. The case of the complainant/respondent before the Trial Court is that the accused/petitioner is known to the complainant for the past 5 years and he had well acquaintance with him by way of purchasing tiles from the accused for the house built by him. The accused borrowed a sum of Rs. 30,00,000/- from the complainant on 06.06.2010 for his business purposes towards loan and to discharge some sundry debts as well as his family

expenses. On the same day, the accused executed a promissory note for a sum of Rs.30,00,000/- and agreed to pay an interest at the rate of 12% per annum.

6. Thereafter, on 02.09.2011, in order to discharge the above said liability the accused has issued a cheque bearing No.253333 for a sum of Rs. 30,00,000/- of Axis Bank Limited at Pondicherry Branch in favour of the complainant. When the said cheque was presented for collection through Axis Bank Limited, Sivakasi Branch, the same was returned unpaid on 26.09.2011, as ''insufficient funds''. The said factum of return was intimated to the complainant by his bank on 26.09.2011.

7. Thereafter, on 15.10.2011, the complainant issued a legal notice to the accused and the same was managed to return by the accused as "not claimed" on 28.10.2011. Thereafter, the accused neither issued a reply nor settled the amount. Hence, the complainant filed complaint under Section 138 of the Negotiable Instrument Act before the Judicial Magistrate Court, Sivakasi. After taking cognizance by the Trial Court that on appearance of the accused, the copies of records relied on by the complainant were

furnished to the accused under Section 207 of Cr.P.C. Thereafter, substance of charge under Section 138 of the Negotiable Instrument Act was explained to the accused and he denied the charge.

8. Thereby, the complainant examined witnesses P.W.1 to P.W.3 and marked documents Exs.P1 to P8. After completion of the complianant side evidence, the accused was examined under Section 313 of Cr.P.C. with regard to the incriminating evidence available as against the accused and the same was also denied by the accused. Thereafter, on the side of the accused, witnesses D.W.1 and D.W.2 were examined and documents Exs.D1 and D2 were marked.

9. After hearing both the sides and perusing the records, the Trial Court has found the accused guilty for offence under Section 138 of Negotiable Instrument Act and the accused was sentenced to undergo one year of Simple Imprisonment and to pay a sum of Rs.30,00,000/- in default to undergo six months of simple imprisonment.

10. As against the judgment and conviction, the accused has preferred an appeal in CA.No.113 of 2013 on the file of the Court of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur. The Appellate Court after hearing both sides and perusing the records, dismissed the appeal by confirming the Trial Court judgment of conviction.

11. Aggrieved by the above said judgment of conviction, the present Criminal Revision Petition has been filed on the following grounds:

(a) The judgment of the Appellate Court in confirming the judgment as well as the conviction and sentence as imposed on him by the Trial Court under Section 138 of Negotiable Instrument Act, proceedings is against law, weight of evidence and probabilities of case.

(b) It is submitted that the Court below failed to appreciate the facts and circumstances of the above case in a perspective manner. The evidence of DW-1 was not considered while appreciating the facts and circumstances of the above said case. It is the specific case of the complainant that for the alleged debt a promissory note got to be executed by the accused to the complainant but DW-1, who is the attesting witness to the promissory note. In his evidence, he deposed there, he never had an occasion to see the complainant and never witnessed any alleged monetary transaction between the accused and the complainant and he has further stated that his signature was obtained in a blank promissory note due to the instigation of one Ganesan who is one another attesting witness, hence, the said document is invalid in the eye of law and the claim made by the complainant is also to be construed as a vexatious claim and hence, the issuance of alleged cheque is not for discharging any legal liability. Hence, the judgment of the Courts below are liable to be interfered with by this Hon'ble Court in this Revision Petition.

(C) The Court below failed to consider the fact that the accused/ petitioner had very well rebutted the presumption under section 139 of the Negotiable Instrument Act by leading cogent evidence. It is also pertinent to be noted that Ex.P1 promissory note got the impression in the revenue stamp of Pondicherry and this make the defence case more probable than the prosecution case. In view of the rebuttal presumption exhibited in the said proceedings by the accused/petitioner , the burden shifted on the head of the complainant/respondent to prove their case. Here, the prosecution cannot proved the same in the manner known to law and hence the Judgment of the Courts below failed to make appreciation in this regard and the same are liable to be interfered with by this Court in this revision petition.

(d) The Courts below failed to consider the fact that Ex.P4 the demand notice had not been served upon the accused and the same was also properly addressed. Hence, the entire proceedings are liable to be vitiated in view of not making any legal demand as made under Section 138 of Negotiable Instruments Act.

(e) It is submitted that when the accused/petitioner is not admitting the execution of the instrument as well as his signature in Ex.P1 and P2 and also made exhibited legally sustainable materials, contraverting the alleged demand as made by the respondent u/s 138 of Negotiable Instruments Act, it is the bounden duty of the respondent to lead direct evidence with regard to the existing legally sustainable debt, without considering the above facts the Courts below wrongly concluded that the accused failed to prove his case beyond any reasonable doubt. Hence, the judgments of the Courts below are liable to be interfered by this Court in this Revision Petition.

(f) The other reasons given by the Courts below for convicting the accused/petitioner is untenable and unsustainable in law and as such the same are liable to be interfered with in this Revision Petition.

12.1. The learned counsel appearing for the accused/petitioner would contend that the complainant/respondent herein has filed a case against the petitioner for offence under Section 138 of Negotiable Instruments Act before the Principal Judicial Magistrate, Sivakasi, alleging that the petitioner has borrowed a sum of Rs.30,00,000/- from him. After the receipt of the amount, the petitioner had executed a promissory note and thereafter, in order to discharge the above said liability the petitioner issued a cheque dated 02.09.2011 for a sum of Rs.30,00,000/- and the same was presented for collection and returned as ''insufficient funds'' and the respondent issued a notice to the petitioner, but the petitioner managed to return the same.

12.2. In fact, this petitioner has not borrowed any amount from the respondent. The respondent has no means to pay such a huge amount to the petitioner. On the side of the petitioner, D.W.1 and D.W.2 were examined. D.W.1 has deposed about the 20 cheques issued to the accused. Amongst the 20 cheques, 10 cheques have been encashed and remaining 10 cheques have not been used. Through him, Exs.D1 and D2 have been marked and D.W.2 also examined who is said to be an attesting witness of the promissory note and he deposed that he had attested in the unfilled promissory note, at the time of attesting in the promissory note neither the complainant nor the accused were present. Thereby, the accused had probablised his defence and further, he rebutted the presumption under Section 138 of the Negotiable Instrument Act.

12.3. On the side of the complainant/respondent, he himself examined as P.W.1 and P.W.2 and P.W.3 were also examined. Further, the complainant/respondent marked promissory note as Ex.P1 and the alleged cheque as Ex.P2. The complainant/respondent has failed to prove the execution of promissory note and the borrowal of such a huge amount. P.W.2 also deposed that he had signed in the unfilled promissory note. Thereby, the complainant/respondent failed to prove his case and the accused/petitioner has proliferated his defence. The above said aspects have not been considered by the Courts below. Further, the Trial Court failed to consider the evidence of D.W.1 and D.W.2 in its perspective manner. The complainant/respondent not even proved the genuinely of Ex.A1 – promissory note by examining the attesting witness. The Trial Court failed to consider that Ex.P4 – Demand notice have not been served on the accused and the same has not been properly addressed to the accused. Therefore, the complainant/respondent had failed to prove his case and the Courts below have failed to consider the same. Therefore, the judgment of the Courts below are liable to set aside by allowing this petition.

13.1. The learned counsel appearing for the complainant/respondent would contend that the accused/petitioner is known person to the complainant/respondent and thereby, he borrowed the sum of Rs.30,00,000/-

as loan from the complainant/respondent. On 06.06.2010, the accused/petitioner borrowed the sum of Rs.30,00,000/- from the complainant/respondent and agreed to pay an interest at the rate of 12% per annum for the above said amount. On the same day itself, the accused/petitioner executed the promissory note in favour of the complainant/respondent. Thereafter, to settle the above said amount, on 02.09.2011, the accused had issued a cheque for the sum of Rs.30,00,000/-. When the same was presented for collection on 26.09.2011 through his bankers, the same was returned as “insufficient funds”.

13.2. Thereafter, the complainant/respondent had issued a notice through his learned counsel on 15.10.2011 but the same was managed to return by the accused/petitioner on 28.10.2011. Thereafter, the accused/petitioner neither paid the amount not issued any reply. Therefore, the complainant/respondent filed a complaint before District Magistrate, Sivakasi under Section 138 of Negotiable Instrument Act. In order to prove the case of the complainant/respondent, P.W.1 to P.W.3 were examined and Exs. P1 to P8 were marked. On the side of the accused, D.W.1 and D.W.2

were examined and Exs.D1 to D2 were marked. The complainant/respondent by way of evidence proved the execution of the promissory note, borrowal of the loan amount and issuance of the cheque by the accused/petitioner. The presumption under Section 138 of the Negotiable Instrument Act is also in favour of the complainant/respondent and thereby, the accused/petitioner has to rebut the presumption made by the complainant/respondent. In this case, the accused/petitioner failed to rebut the presumption and not even entered into the Box to substantiate his contention and only the attesting witnesses were examined.

13.3. Therefore, the Trial Court taking into consideration of both sides evidence correctly convicted the accused/petitioner for the offences under Section 138 of the Negotiable Instrument Act. The Appellate Court also after discussing of the legal and factual aspects passed judgment by confirming the judgment passed by the Trial Court and dismissed the appeal. Therefore, this Criminal Revision Petition is liable to be dismissed.

14. This Court heard both sides and perused the materials available

on record.

15. Upon hearing both sides, perusing the records, judgments of the Courts below, and grounds, the points for determination in this petition is, 'whether the judgment passed by the Learned Principal District and Sessions Judge in C.A.No.113 of 2013 dated 24.10.2018 by confirming the judgment of conviction passed by the Learned Judicial Magistrate, Sivakasi in C.C.No. 4336 of 2011 dated 24.07.2013 are substantiate in law and on facts'.

POINTS:

(i) The case of the complainant is that the accused is a known person to him and thereby, the accused borrowed a sum of Rs.30,00,000/- from the complainant on 06.06.2010. After receipt of above said amount, the accused executed a promissory note for a sum of Rs.30,00,000/- and agreed to pay an interest at the rate of 12% per annum. Thereafter, in order to settle the above said amount, on 02.09.2011, the accused issued a cheque for a sum of Rs. 30,00,000/-. When the same was presented for collection, it was returned as “insufficient funds” and thereafter, the complainant issued a legal notice to the accused and the same was returned as “unclaimed”. Thereby, he filed the complaint.

(ii) The case of the defence is that the accused denied the execution of the promissory note, passing of consideration through that promissory note and also denied the issuance of cheque and the signature found in that cheque. Further, the accused disputed the source of income to pay such huge amount.

(iii) In order to prove the case of the complainant, he examined himself as P.W.1 and two other witnesses were examined. P.W.2 – Bank Manager and P.W.3 – an independent witness.

(iv) P.W.1, in his evidence has deposed that the accused known to him through his relative one Prabhakaran. In the first week of May 2010, the accused asked money from the complainant. Thereafter, on 28.05.2010, the complainant withdrawn a sum of Rs.10,00,000/- from his bank account and on 04.06.2010, Rs.9,90,000 was arranged by him. Thereafter, on 06.06.2010, he paid a sum of Rs.30,00,000/- to the accused. On the same day, the accused executed a promissory note and agreed to pay interest at the rate of 12 % per annum for the above said amount. At the time of borrowal of the amount one witness, Prabhakaran was present and he attested in the promissory note. In order to settle the above amount, the accused issued a cheque dated 02.09.2011 for a sum of Rs.30,00,000/-. When the same was presented for the collection, it was returned and then, the complainant issued a notice to the accused and the accused managed to return the same. Therefore, from the evidence of P.W.1, it reveals that the accused borrowed the sum of Rs. 30,00,000/- from the complainant and for that, he executed the promissory note and thereby, he issued a cheque to discharge the sum of Rs.30,00,000/-.

(v) P.W.2, also deposed about the bank account details of the complainant and deposed the amount drawn from the account for a sum of Rs.10,00,000/-.

(vi) Further, on the side of the complainant, P.W.3 was also examined and he deposed about his presence at the time of money paid to the accused by the complainant and he also deposed that he is the Scribe of the promissory note and also witness to the promissory note. He also deposed about the receipt of amount by the accused and the attestation made by another witness, Prabhakaran. Therefore, from the evidence of P.W.1 to P.W. 3, they revealed that the accused borrowed a sum of Rs.30,00,000/- from the complainant.

(vii) In order to rebut the above said complianant side evidence, on the side of the accused, he examined D.W.1 and D.W.2. D.W.1 – Bank Manager and he deposed about the 20 cheque leaves issued to the accused and amongst the 20 cheques, 10 cheques were encashed and the remaining 10 cheques were not used. D.W.2 had deposed that he attested in the promissory note – Ex.P1, as second witness and does not know about the complainant, Mohanraj and he know about the accused. One Ganesan, had attested in the promissory note as first witness and the above said signature was put by him at Pondicherry in the month of October 2011. At the time of putting signature, the promissory note was in blank and there was no any money transaction and neither the complainant nor the accused were present at the time of the attesting the promissory note. As per the request made by Ganesan, he put his signature in the above said promissory note. Therefore, from the evidence of D.W.2, it reveals that he put his signature in the blank unfilled promissory note and neither the complainant nor the accused were present at the time putting signature in the promissory note.

(viii) **D.W.2:** D.W.2 has stated that he put his signature in the blank promissory note as instructed by the said Ganesan. The ordinary prudent man cannot put his signature in the blank promissory note as attesting witness, but the evidence of D.W.2 in this regard is unusual. Further, there is no evidence adduced by the defence side what is the relationship between Ganesan and D.W.2 and why D.W.2 put his signature in the unfilled promissory note as witness has to be explained by the defence side but there is no any explanation in that regard. Thereby, the evidence of D.W.2 is highly doubtful and it does not inspire the confidence of this Court.

(ix) **D.W.1:** Though D.W.1 deposed about the cheques issued in the name of the accused and some of the cheques were encashed and some of the cheques were not encashed. The said evidence is noway helpful to the accused to prove that the disputed cheque has not been issued to the accused. Therefore, it is the duty of the accused to prove as to how the cheque reached the hands of the complainant has to be explained but there is no evidence adduced by the accused in that regard. Therefore, the contention of the accused that he has not issued any cheque to the complainant is not acceptable one.

(x) The main witness to deny the execution of promissory note is accused, but in this case, the accused has not entered into the witness Box.

Per contra, the complainant side evidence shows the borrowal of money by the accused and the issuance of the cheque and the execution of promissory note. The complainant has proved the complaint and the accused failed to prove his contention. Presumption under Section 139 of the Negotiable Instrument Act was also in favour of the complainant since, he proved his case. Further, the accused has to rebut the presumption under Section 139 of the Negotiable Instrument Act. But in this case, he failed to rebut the presumption.

(xi) Though the accused denied the capacity of the complainant to pay the cheque amount, the complainant proved the execution of the promissory note and the issuance of the cheque and passing of consideration and thereby, it is the duty of the accused to rebut the same. Further, the complainant examined P.W.2 and marked bank statement with regard to the withdrawal of the amount few days prior to the day of borrowal of the amount by the accused. Therefore, the complainant had proved that he had source of income to pay above said cheque amount but the accused failed to rebut the same through sufficient evidence.

(xii) On perusal of the records, it is seen that the Trial Court in the judgment has mentioned the case as C.C.No.4336 of 2011 [Calendar Case Number] but the same Trial Court in the judgment mentioned the provision under Section 255(2) of Cr.P.C. Further, the Trial Court also conducted the case by adopting the summary procedure. The heading of the nature of the case has been wrongly mentioned as C.C. instead of S.T.C. No.4336 of 2011. Though the grounds raised before the Appellate Court with regard to the procedure adopted by the Trial Court for the summary trial, no grounds raised before this Court with regard to the procedure adopted by the Trial Court.

16. In this context, the Trial Court after discussing various citations of the Hon'ble Apex Courts as well as this Court correctly came to the conclusion that the complainant proved his case through sufficient evidence and the defence failed to rebut the presumption under Section 139 of the Negotiable Instrument Act and convicted the accused.

17. The Appellate Court also elaborately discussed about the procedure adopted by the Trial Court for the Trial of the summary procedure and answered all the grounds raised by the accused regarding the procedure

adopted by the Trial Court and thereafter, analysed the evidence adduced on either side and the judgment of the Trial Court and also discussed the various judgments of the Hon'ble Apex Court and this Court and fairly came to the conclusion and dismissed the appeal by confirming the judgment of the Trial Court.

18. Therefore, there is no any perverse or infirmities found on the judgments of the Courts below. Hence, there is no reason for interference with the judgments of the Courts below by this Court. In view of the above said discussion, this Court is of the opinion that this Criminal Revision Petition has no merits and deserves to be dismissed.

19. In the result, this Criminal Revision Petition stands dismissed and the judgment passed in C.A.No.113 of 2013 on the file of the Court of Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur dated 24.10.2018 by confirming the judgment of conviction passed by the Learned Judicial Magistrate, Sivakasi, Virudhunagar District in CC.No.4336 of 2011 dated 24.07.2013 is confirmed. The bail bond executed by the

accused shall stand cancelled and the Trial Court is directed to secure the accused as per law.

17.11.2023

Index: Yes/No
Internet : Yes/No
NCC : Yes/No
ssa

To

1. The Principal District and Sessions Judge,
   Virudhunagar District,
   Srivilliputhur.

2. The Judicial Magistrate,
   Sivakasi,
   Virudhunagar District.

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

4. The Additional Public Prosecutor
   Madurai Bench of Madras High Court,
   Madurai

P.DHANABAL, J.

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Crl.R.C.(MD)No.596 OF 2019

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