BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2023

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.R.C.(MD).No.212 of 2021

B.Vinoth Kumar ... Petitioner

Vs.

V.Muthuramalingam ... Respondent

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the lower Court records in Criminal Appeal No:114 of 2019 dated 12.08.2020 on the file of the VI Additional District and Sessions Judge, Madurai, in S.T.C.No.417 of 2016, dated 23.09.2019 on the file of the learned Judicial Magistrate No.2 (Fast Track), Madurai and to set aside the order passed by the lower Courts.

For Petitioner : Mr.T.K.Gopalan

For Respondents : Mr.M.Tamil Mani

ORDER

This Criminal Revision Case has been preferred against the Judgment passed in Criminal Appeal No:114 of 2019, dated 12.08.2020, on the file of the VI Additional District and Sessions Judge, Madurai, confirming the order passed in S.T.C.No.417 of 2016, dated 23.09.2019, on the file of the learned Judicial Magistrate No.2 (Fast Track), Madurai.

2.The brief facts in brief:

In 2013, the complainant and the accused became known to each other through a common friend. The accused requested the complainant to purchase raw gold material on behalf of him. He also promised to pay the cost in cash. From 2013 onwards the complainant used to purchase the raw gold through online and in turn supply the same to the accused. For each supply the accused used to pay 50% of the price and balance amount be paid after selling the gold. In May 2013, he verified the account statement. At that time he found Rs.27,00,000/- was due to be paid by the accused. When that was demanded accused promised to settle the same through compromise. But later evaded. In October 2013, he issued a cheque bearing No.000111, dated 29.11.2013, in the presence of three persons. He asked him to present the same for payment on 29.11.2013. When it was presented for payment, it was returned as 'payment stopped by drawer'. It was intimated to him by the Bank and so he issued statutory notice on 13.12.2013. It was received by the accused. But, no payment was made.

3.Before the trial Court on the side of the complainant two witnesses have been examined PW1 and PW2 and 8 documents were marked as Ex.P1 to Ex.P8 and on the side of the accused he himself was examined as RW1 and 17 documents were marked as Ex.R1 to R17. At the conclusion of the trial process, the trial Court found that the case was proved beyond all reasonable doubt and accordingly, the accused was convicted and sentenced to undergo six months simple imprisonment and apart from imposed payment of compensation of Rs.27,00,000/-. Against which, he preferred an appeal before the learned VI Additional Sessions Judge, Madurai, and that was heard in Crl.A.No.114 of 2019 and it came to be dismissed concurring with the judgment of the trial Court. Against the concurrent findings, this revision has been preferred by the accused.

4.Heard both sides.

5.The counsel for the petitioner would submit that Ex.P6 was not considered by the trial Court and by the appellate Court; there is failure on the part of the trial Court to consider that document is fatal, vitiating the entire judgment. During the course of evidence, the accused admitted the transaction. Even though PW1 admitted the availability of the account that was not produced before the trial Court; In the reply notice, reason for issuing of the Blank cheque was given; The stop payment order was issued on 04.11.2013 itself; But only after a lapse of several days, the cheque was presented for payment on 29.11.2013; The reply was not properly considered by the trial Court; The appellate Court also failed to consider the same; Similarly, the point that was extracted during the course of cross examination of PW1 with regard to the non filing of IT statement, non mentioning of the amount to be paid by the accused, were not properly considered.

6.An elaborate argument has been advanced by the learned counsel for the revision petitioner touching even the factual aspects. But, the revision has been preferred against the concurrent findings. So the scope is very limited and this Court has to find out whether any illegality or irregularity has been committed by the trial Court and as well as the appellate Court. Apart from that whether the finding was recorded without any evidence, is it perverse in nature, is the point for consideration.

7.On going through the entire records, finding that there was continuous admitted transaction between the parties, the matter was reopened for clarification with regard to the availability of the allowed from both of them. Both of them answered that absolutely there was no account showing transaction.

8.Now the case of the complainant is that it is a running account, by which, he used to purchase the raw gold through online, in turn, supply the same to the accused and the accused used to pay half of the price and used to pay the balance amount after selling the same. So this will amount to a continuous transaction. So the account ought to have been maintained by both the parties. The complainant would say that after going through the statement of account, only he came to know that Rs.27,00,000/- was due to paid by the accused. For that amount there was no documentary evidence, except the account statement. The revision petitioner has also produced various receipts showing the payment of money to the complainant through Bank deposits. It is known that as stated by the complainant, it was a running transaction between them.

9.Now, the question which arises for consideration is that whether in the absence of any documentary evidence, except the account statement of the complainant, whether foundation facts has been laid by the complainant to draw presumption under Section 139 of NI Act, since the signature and as well as issue of the cheque has been admitted by the accused.

10.Perusal of the accused evidence shows that a counter claim has been made by him and he has stated that in the above said transaction he paid money to the account of the complainant and as well as his wife on various dates and various amounts. In the course of above said continuous transaction, he has totally paid Rs.81,90,600/-. But, the complainant has supplied 2.587.430 Kilograms of gold. The total worth is Rs.67,27,318/-. The balance amount to be paid by the complainant is Rs.14,63,282/-. Subsequently, also payment was made and supply was also made by the accused. At the end of the transaction it was found that he has totally paid Rs.1,04,27,318. He received gold worth about Rs.67,27,318/-. The balance amount of Rs.37,00,000/- was due to be paid by the complainant. When that was demanded, he promised to either pay it in cash or supply raw gold.

11.For arranging the money only through banking loan a property was also agreed to be mortgaged; But later, he intended to sell the property.; For the purpose of purchasing the stamp duty, he obtained unfilled cheque.; To support the same he has also given the ID card. But, later, the sale deed was executed in the name of his brother-in-law; Only, at the time of police enquiry, he came to know that signature has been obtained fraudulently by the complainant at the time of registration of the sale deed; A police complaint was also given by him; Later, it was closed in Crime No.1305 of 2013. Later, he filed the private complaint against the complainant and his wife. Perusal of the evidence shows that a counter claim has also been made by him and not only he filed police complainant and subsequently, private complaint against the complainant and his wife stating that he has been cheated by them. Now, the entire issue boils to a single point as to whether by way of this evidence disclosing the facts, the revision petitioner has rebutted the presumption under Section 139 of NI Act.

12.The learned counsel for the petitioner would rely upon a number of judgments to sustain the point that when the case is based upon the account, unless that account is produced, no liability can be imposed.

1. Judgment of this Court in the case of ***K.Mallesan Vs. K.Madhappan*** reported in ***2018 (2) MWN (Cr.) DCC 32 (Mad.)***,
2. Judgment of this Court in the case of ***P.Govindaraj @ Mani, proprietor, Goldwin Enterprises Vs.R.Kannan, Proprietor, Rowenta Exports,*** reported in ***2018 (3) MWN (Cr.) DCC 149 (Mad.),***
3. Judgment of this Court in the case of ***Micson Finance Vs. V.Sampath Sekar,*** reported in ***2018 (3) MWN (Cr.) DCC 138 (Mad.),***
4. Judgment of the Honourable Supreme Court in the case of ***Basalingappa Vs. Mudibasappa,*** reported in ***2019 (2) T.N.L.R. 1 (SC),***
5. Judgment of the Honourable Supreme Court in the case of ***Bir Singh Vs. Mukesh Kumar,*** reported in ***I (2019) BC 563 (SC),***
6. Judgment of the Honourable Supreme Court in the case of

Basalingappa Vs. Mudibasappa, reported in ***2019 (1) MWN (Cr.) DCC 145 (SC),***

7. Judgment of this Court in the case of ***H.Ubaidulla vs. S.Elango,*** reported in ***2019(1) MWN (Cr.) DCC 159 (Mad.),***
8. Judgment of this Court in the case of ***K.Suresh Prabhu Vs. S.Ramesh,*** reported in ***2022 (6) CTC 187*** and
9. Judgment of this Court in the case of ***Tamilarasan Vs. Murugan,*** reported in ***(2022) 1 MLJ (Crl.) 442***.

13.The law with regard to the rebuttable presumption is well settled. I need not elaborately extract the judgments of the Court that has been cited by the revision petitioner. Suffice to says that whether the factual circumstances of the case or whether in the light of the above said plea that has been taken by the accused a probable defence has been taken.

14.Absolutely, I am not in a position to appreciate the defence theory. What is the necessity for the accused person to issue cheque for the purpose of taking out the DD in the name of the brother-in-law of the complainant for paying the money towards the stamp duty is not understandable. Already a dispute exists between the complainant and accused with regard to the balance amount to be paid. The complainant says that Rs.27,00,000/- remains to be paid by the accused, whereas the accused says that more than Rs.37,00,000/- is liable to be paid by the complainant in view of the above said transaction. So when counter claim is being made, the above said defence that has been taken by the accused is totally unreliable, improper, unnatural also. So absolutely, I find no ground that has been made out by the accused to believe his defence theory.

15.With regard to the actual amount due to the revision petitioner, he would rely upon the price of the gold that existed during the course of transaction. So this has been pointed out in relation to the suggestion that was made by the complainant to the accused during the course of evidence. It was suggested that totally 4.436 kilograms of pure gold was supplied to him. But, contrary to this, he is delivering that only 2.587 kilograms was supplied to him. The cost of 4.436 kilograms has been calculated as Rs. 1,31,30,560/-. So according to the accused even as per the calculation amount that has been mentioned by the complainant is not correct. Those things were not put on record during the trial Court. So this cannot be taken into account now. As stated above, since the signature is admitted as pointed out by the trial Court, the judgment of the Honourable Supreme Court in ***Sri Rangappa Vs. Sri Mohan*** reported in ***(2010) 11 SCC 441***, will come into operation and the accused has not successfully rebutted the presumption.

So naturally he has to suffer the conviction and sentence imposed by the trial Court.

16.I find no reason to interfere into the concurrent judgment of the trial Court and as well as the appellate Court.

17.Accordingly, this criminal revision case is dismissed.

08.02.2023

Index : Yes / No
Internet : Yes / No
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To

1. The VI Additional District and Sessions Judge, Madurai.
2. The Judicial Magistrate No.2 (Fast Track), Madurai.

G.ILANGOVAN,J.

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