BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.03.2023

PRONOUNCED ON : 31.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.644 of 2016
and Crl.M.P(MD)Nos.8749 & 8750 of 2016

Raman ... Petitioner/ Appellant/Accused

Vs.

Ravichandran ... Respondent/ Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and Section 401 of the Code of Criminal Procedure, to call for the records and set aside the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate, Musiri in C.C.No.12 of 2014, dated 05.12.2015 and confirmed by the learned II Additional District Judge (FAC), Trichy in Criminal Appeal No.1 of 2016, dated 23.08.2016 and acquit the petitioner.

For Petitioner : Mr.RM.Sivakumar

For Respondent : Mr.S.Vinayak

ORDER

This revision has been filed to set aside the order passed in Criminal Appeal No.1 of 2016, dated 23.08.2016, on the file of the learned II Additional District Judge (FAC), Trichy, confirming the Judgment passed in C.C.No.12 of 2014, dated 05.12.2015, on the file of the learned Judicial Magistrate, Musiri.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.3,00,000/- as cash from the respondent on 15.09.2013 and he promised to return the same within two months. However, the petitioner failed to return the said sum as promised by him. The respondent made demands to pay the said amount. Subsequently, in order to repay the said amount, on 14.11.2013, the petitioner issued a cheque for the said sum in favour of the respondent. It was presented for collection and the same was returned dishonoured for the reason that the 'funds insufficient'.

Thereafter, the respondent caused statutory notice and lodged the complaint.

4.On the side of the respondent, he himself was examined as P.W.1 and marked Exs.P.1 to P.5 and on the side of the petitioner, he had examined D.W.1 to D.W.3 and marked Ex.D.1 to Ex.D.15.

5.On perusal of the oral and documentary evidence, the trial Court found him guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo five months Rigorous Imprisonment and imposed a fine of Rs.2,000/- and in default, he shall undergo 15 days Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in Criminal Appeal No.1 of 2016 on the file of the learned II Additional District Judge (FAC), Trichy and the same was also dismissed confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present Revision.

6.The learned counsel appearing for the petitioner would submit that the petitioner never borrowed any loan as alleged by the respondent herein. Therefore, the alleged cheque was not issued for any legally enforceable debt. In fact, the respondent had issued a statutory notice under Section 138 of the Negotiable Instruments Act on 20.06.2013, thereby calling upon the petitioner to pay a sum of Rs.2,00,000/- in pursuant to the dishonour of cheque bearing No.156938 for the sum of Rs.2,00,000/-. In the said notice, further alleged that the petitioner borrowed a sum of Rs.2,00,000/- on 20.02.2013 and in order to repay the said amount, he issued a cheque on 14.06.2013. However, after issuance of a notice, there was no initiation of a complaint under Section 138 of the Negotiable Instruments Act. While being so, again the respondent had lent a sum of Rs.3,00,000/- as a loan, that too, without any security on 15.09.2013. It is highly improbable and not believable one. No prudent man would lend money without any security, that too after issuance of statutory notice under Section 138 of the Negotiable Instruments Act for the earlier alleged borrowal of loan. In order to rebut the presumption, the petitioner had examined D.W.1 to D.W.3. D.W.1 and D.W.2 are none other than husband and wife and they are running Shri Venkateswara Finance and Shri Balaji Finance, in which D.W.2 was one of the shareholder and she was also the Managing Director of Shri Balaji Finance. The petitioner used to borrow loan from the said Finance and for security purposes, he executed blank pro-notes and handed over blank signed cheques. The cheque bearing Nos.156938 and 156939 were given as security while borrowing loans from Shri Balaji Finance. The said cheque was never issued in favour of the respondent herein. In fact, after repayment of the entire loan, the said cheques were returned in favour of the petitioner. Therefore, the present cheque impugned in the present complaint was also issued in favour of Shri Balaji Finance as security while borrowing a loan by a third person, on which the petitioner stood as a guarantor. Therefore, the petitioner categorically rebutted the presumption arising under Section 139 of the Negotiable Instruments Act.

7.The learned counsel appearing for the petitioner would further submit that the Income Tax return was marked by the respondent as Ex.P.5. It revealed that the respondent has had liabilities to the tune of Rs.20,49,075/- as on 31.03.2013 and he had assets to the tune of Rs.20,49,075/-. The said document was prepared after initiation of the proceedings under Section 138 of the Negotiable Instruments Act and marked as Ex.P.5. Even according to the Income Tax returns, the respondent availed loan by pledging jewel and loan from the private parties during the period in which allegedly the respondent had lent a sum of Rs.3,00,000/- in favour of the petitioner. That apart, the respondent is being a Government servant, he is drawing only a sum of Rs.18,000/- and odd as take home salary and he had a yearly income not more than Rs. 2,50,000/-. Therefore, he had no source to lend such huge money that too, without any security. Unfortunately, both the Courts below without considering the above facts and circumstances blindly convicted the petitioner.

8.Per contra, the learned counsel appearing for the respondent would submit that the petitioner never denied his signature and issuance of cheque. Therefore, the respondent discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act and presumed that the cheque was issued for legally enforceable debt as contemplated under Section 138 of the Negotiable Instruments Act.

9.The respondent caused statutory notice, dated 20.06.2013 to the petitioner under Section 138 of the Negotiable

Instruments Act for dishonour of the cheque for the sum of Rs. 2,00,000/-. Subsequently, he repaid and settled the entire amount. Therefore, on 15.09.2013, again the respondent had lent a sum of Rs.3,00,000/- as loan. The petitioner used to borrow loans from the respondent very often and used to return the amount. However, he failed to repay the loan amount which was borrowed on 15.09.2013. In order to repay the said loan amount, he issued cheque and the cheque was dishonoured for the reason that the 'funds insufficient'. In fact, after receipt of the statutory notice, the petitioner failed to reply in order to rebut the presumption. Hence, both the Courts below rightly convicted the petitioner and it does not warrant any interference by this Court.

10.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the entire materials available on record.

11.The specific case of the respondent is that the petitioner borrowed a sum of Rs.3,00,000/- on 15.09.2013. In order to repay the said amount, he issued cheque for the said amount on 14.11.2013. It was presented for collection and the same was returned dishonoured for the reason that the 'funds insufficient'. Therefore, he caused statutory notice and the same was marked as Ex.P.3. The respondent was examined as P.W.1. Though the statutory notice was duly received by the petitioner, he did not reply. In his cross-examination, he admitted that he was working as a Lab Assistant and he was drawing a salary for a sum of Rs.25,000/- per month. He also admitted that he is a close friend of D.W.1. He along with the petitioner stood as a guarantor for a third party while availing loan from the said Shri Venkateswara Finance and Shri Balaji Finance. The petitioner also used to borrow the money from the said Shri Balaji Finance for which the respondent stood as a guarantor.

12.On perusal of evidence of D.W.1 revealed that he is the close friend of the respondent. The petitioner used to borrow loans from him and Shri Balaji Finance for which, the respondent stood as a guarantor. While borrowing loan, the petitioner handed over pro-notes and cheques. After repayment of the loan, the cheques were returned to the petitioner. He also admitted that the cheque bearing Nos.156938 and 156939 were handed over by the petitioner while borrowing a loan. In fact, after repayment of the said loan, the cheques were returned to the petitioner. Therefore, there was absolutely no possibility for the petitioner to borrow any loan from the respondent and in order to repay the said loan, the petitioner issued the cheque bearing No.156938 in favour of the respondent. It shows that after repayment of the entire loan to Shri Balaji Finance, the cheque which was given as security was presented in the name of the respondent in order to get extra money from the petitioner.

13.The specific case of the petitioner is that the alleged cheque in the present complaint was also handed over to D.W.1 while borrowing loan. After repayment of the entire loan, the said cheque was misused by the respondent, who is being a close friend of D.W.1 and initiated the proceedings under Section 138 of the Negotiable Instruments Act. It is also corroborated by D.W.2, who is none other than the wife of D.W.1 and she is also the Managing Director of Shri Balaji Finance.

14.That apart, the respondent marked the Income Tax return as Ex.P.5. It was filed on 01.01.2015, namely, after the initiation of the proceedings under Section 138 of the Negotiable

Instruments Act. It revealed that the respondent had shown as liabilities to the tune of Rs.20,49,075/-, equally he had shown the assets for the said sum. However, at the time of alleged transaction namely on 15.09.2013, he borrowed a jewel loan and from Financier HFL. He also borrowed loans from Adaikalaraj and Revathy. Further, the respondent was working as a Lab Assistant at the time of the alleged borrowal of loan by the petitioner and he was drawing a sum of Rs.2,78,088/- per year. Therefore, the respondent had no source of income other than the salary in order to lend money.

15.On perusal of the evidence of D.W.1 and D.W.2 and P.W.1 revealed that they all closely associated and D.W.1 used to present the cheque which was received as security from the borrowers in the name of the respondent as well as other friends. Therefore, the respondent failed to prove that he had lent a sum of Rs.3,00,000/- to the petitioner on 15.09.2013. Further, the respondent caused statutory notice to the petitioner on 20.06.2013 thereby calling upon him to pay a sum of Rs.2,00,000/- for the dishonour of the cheque bearing No.156938. Thereafter, he further had lent a sum of Rs.3,00,000/- on 15.09.2013. No prudent man would lend such a huge sum, that too after dishonouring the cheque which was issued by the person for the previous borrowal. Therefore, the case of the respondent is unbelievable one and the cheque which was issued for security purposes in favour of Shri Balaji Finance was misused by the respondent. In fact while cross-examination of P.W.1, he did not answer properly with regard to the source of income and his financial capacity to lend such a huge sum of Rs.3,00,000/- that too without any security. The evidence on record thus is a probable defence by the petitioner, which shifted the burden on the respondent to prove his financial capacity and other facts. However, the respondent failed to prove the same.

16.Taking into consideration of all the facts and circumstances, it appears that the petitioner sufficiently rebutted the presumption arising under Section 139 of the Negotiable Instruments Act. Hence, Ex.P.1 was not issued for any legally enforceable debt in favour of the respondent in order to attract the offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, the conviction and sentence imposed by the Courts below cannot be sustained against the petitioner and the same is liable to be set aside.

17.Accordingly, the Criminal Revision Case is allowed and the Judgment passed in Criminal Appeal No.1 of 2016, dated 23.08.2016, on the file of the learned II Additional District Judge (FAC), Trichy, confirming the Judgment passed in C.C.No.12 of 2014, dated 05.12.2015, on the file of the learned Judicial Magistrate, Musiri, are set aside. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused forthwith. Consequently, connected Miscellaneous Petitions are closed.

31.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

1.The II Additional District Judge (FAC),
Trichy.

2.The Judicial Magistrate,
Musiri.

G.K.ILANTHIRAIYAN, J.

ps

Pre-Delivery Order made in
Crl.R.C(MD)No.644 of 2016

31.03.2023