BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.9 of 2017

Samkutty ... Revision Petitioner/
Appellant/Accused

Vs.

Leena Rose (Died) ... Respondent/
Respondent/Complainant

1.Antony Raj
2.Antony Vasanth
3.Niranjan ... Substituted Respondent 2 to 4

(R1 to R3 substituted as per order dated
11.12.2020 in Crl.R.C(MD)No.9 of 2017)

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, against the Judgment of the learned I Additional District and Sessions Judge, Tirunelveli in C.A.No.17 of 2014, dated 12.08.2016, confirmed the conviction and sentence passed by the learned Judicial Magistrate, Sankarankovil, in S.T.C.No.245 of 2009, dated 31.12.2013.

For Petitioner : Mr.S.Ramasamy

For RR 1 to 3 : Mr.R.Devaraj

ORDER

The revision has been filed against the Judgment passed by the learned I Additional District and Sessions Judge, Tirunelveli in C.A.No.17 of 2014, dated 12.08.2016, confirming the conviction and sentence passed by the learned Judicial Magistrate, Sankarankovil, in S.T.C.No.245 of 2009, dated 31.12.2013, thereby convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one Simple Imprisonment and to pay a fine of Rs.10,000/-, in default, three months Simple Imprisonment.

2.The petitioner is an accused in the complaint lodged by the deceased respondent under Section 138 of the Negotiable Instruments Act. Pending the revision, the respondent died. Hence, respondents 1 to 3 were substituted in the place of the respondent, vide order, dated 11.12.2020.

3.The deceased respondent lodged a complaint alleging that the petitioner borrowed a sum of Rs.5,00,000/- with interest to meet out his family expenses. He also promised to repay the loan amount within a period of seven months. However, the petitioner failed to repay the said loan amount, even after the expiry of the said period. Therefore, the deceased respondent demanded to repay the said loan amount. In order to repay the entire loan amount, the petitioner issued a cheque and the same was presented for collection. The Bank returned the cheque unpaid with an endorsement as 'funds insufficient'. Immediately, the deceased respondent caused statutory notice and on receipt of the same, the petitioner also replied by reply notice. Hence, the complaint.

4.On the side of the deceased respondent, she herself was examined as P.W.1 and marked Exs.P.1 to Ex.P7 and on the side of the petitioner, one Murugesan was examined as D.W.1 and marked Ex.D.1.

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 one year Simple Imprisonment and to pay a fine of Rs.10,000/-, in default, shall undergo three months Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.17 of 2014 on the file of the learned I Additional District and Sessions Judge, Tirunelveli and the Appellate Court also confirmed 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 deceased respondent had no source of income to lend such a huge amount of Rs.5,00,000/-. The cheque was stolen by her son and presented the same for collection. The alleged cheque was presented for collection on 23.09.2008 before the Indian Bank at Sankarankovil Branch. It was returned the cheque unpaid on 11.11.2008 with an endorsement as 'funds insufficient'. Whereas, the written memo was communicated to the deceased respondent only on 26.11.2008. However, the deceased respondent caused legal notice only on 08.12.2008. The deceased respondent failed to issue statutory notice within a period of 15 days from the date of return of the cheque. The alleged cheque was returned dishonoured on 11.11.2008, whereas notice was issued only on 08.12.2008. Therefore, the complaint itself is not maintainable as barred by limitation.

7.Heard the learned counsel appearing on either side and perused the materials available on record.

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

9.The learned counsel for the petitioner contended that the deceased respondent had no source of income at the time of the alleged borrowal of the loan. Further, there was a dispute between the complainant's son and the petitioner. In order to wreak vengeance, a false complaint has been foisted as against him. After dishonoured of the cheque, the deceased respondent caused notice which was marked as Ex.P.5. On receipt of the same, the petitioner caused reply notice dated 17.11.2008, which was marked as Ex.P.7.

10.On perusal of Ex.P.7, nothing whispered about the grounds raised herein by the petitioner. The petitioner also raised the ground that the cheque was already stolen by the son of the deceased respondent herein. However, no complaint was lodged even after receipt of the statutory notice for the stolen of the cheque. Further, a perusal of the reply notice also revealed that the petitioner herein does not even whisper about the source of income of the deceased respondent at the time of lending money. He also failed to record his statement under Section 313 of Cr.P.C., about the source of income of the deceased respondent herein. In fact, he did not even cross-examined P.W.1 to that effect. In so far as the return of cheque is concerned, the cheque was marked as Ex.P.1. It was presented for collection on 26.09.2008. It was returned dishonoured by the petitioner's Bank on 15.10.2008 to the deceased respondent Bank. It was intimated by the memo, dated 26.11.2008 to the deceased respondent herein. Immediately, on receipt of the same within a period of 15 days, the deceased respondent caused legal notice on 08.12.2008, which was marked as Ex.P.5.

11.When the petitioner specifically raised the ground that the statutory notice was not issued in time since the cheque was returned as early as on 15.10.2008 itself, however, the petitioner failed to examine his banker as to on which date the cheque was returned and when it was informed to the deceased respondent's Bank about the dishonoured of the cheque. The deceased respondent marked the return memo and also the intimation memo about the return of the cheque as Ex.P.3 and Ex.P.4. In order to rebut the same, the petitioner failed to examine his banker. Though the petitioner had taken a specific stand that Ex.P.1 was stolen by the deceased respondent's son, whereas, no complaint was lodged even before the lodgment of the complaint and even after the lodgment of the complaint. The petitioner failed to rebut the presumption by oral or material evidence. Therefore, the Courts below rightly convicted the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and this Court finds no illegality or irregularity in the order passed by the Courts below and the Criminal Revision Case is dismissed.

07.03.2023

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

To

1.The Fast Track Mahila Court,
Nagercoil.

2.The Assistant Sessions Judge,
Padmanabhapuram.

3.The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

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

G.K.ILANTHIRAIYAN, J.

ps

Order made in
Crl.R.C(MD)No.9 of 2017

07.03.2023