IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1178 of 2020
and Crl.M.P.No.8189 of 2020

P.A.Sanjeev Kumar ... Petitioner

Vs.

M/s.Dharane Auto Finance
Represented by its Partner E.Venkateswaran
S/o. Easwaramoorthy
120, Sampathi Nagar Near P & C Apartment,
Erode. ... Respondent

Prayer : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code 1973 to set aside the judgment and orders dated 12.02.2020 passed in Crl.A.No.147/2019 by the Principal Sessions Judge, Erode, confirming the judgement and orders dated 23.03.2019 passed in S.T.C.No.103/2018 by the Judicial Magistrate, Fast Track Court No.I, Erode.

For Petitioner : Mr.Sunny Sheen Akara
for M/s.V.Srimathi

For Respondent : Mr.R.Siva

ORDER

Challenging the conviction and sentence passed by the learned Principal Sessions Judge, Erode in Crl.A.No.147/2019 confirming the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.103/2018, the present criminal revision case is filed.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present revision case would also be indicated.

3. The case of the respondent / complainant in a nutshell is as follows :

3.1. The revision petitioner / accused borrowed a sum of Rs.6,00,000/- from the complainant on 25.03.2017 promising to repay the principal together with interest @ 18% per annum. In order to liquidate the debt, the accused issued a post dated cheque (Ex.P1) bearing number 514404 dated 13.12.2017 drawn on IndusInd Bank, Avinashi Branch for a sum of Rs.6,00,000/- in favour of the complainant.

3.2. When the complainant presented the cheque for collection on 29.01.2018 through his bankers, viz., Karur Vysya Bank, Sampath Nagar Branch, the same was returned for the reason 'Refer to drawer' as is seen from the cheque Return Memo dated 30.01.2018 (Ex.P2).

3.3. Thereafter, the complainant issued a statutory notice dated 09.02.2018 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

3.4. Though the accused received the statutory notice as is evidenced by the postal acknowledgement card (Ex.P4), he did not come forward to make good the payment. He did not also send any reply to the notice.

3.5. Therefore, the respondent / complainant filed a private complaint before the Judicial Magistrate, Fast Track Court-I, Erode, under Section 200 Cr.P.C. against the revision petitioner / accused for the offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in S.T.C.No.103/2018.

3.6. The learned Judicial Magistrate, Fast Track Court-I, Erode took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.

3.7. On the appearance of the accused, the copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

3.8. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P4.

3.9. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. However, he did not adduce any evidence on his side.

3.10. After full trial, the learned trial court judge, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a sum of Rs.6,00,000/- towards compensation to the complainant, in default, to undergo simple imprisonment for two months, vide his judgment and orders dated 23.03.2019.

3.11. Aggrieved over the same, the accused filed an appeal in Crl.A.No.147/2019 before the Principal Sessions Court, Erode. The learned Principal Sessions Judge, Erode, after analysing the evidence on record, confirmed the findings recorded by the trial court and dismissed the appeal, as against which the present criminal revision case is filed by the revision petitioner / accused.

4. It is appropriate to point out that this Court while exercising its revisional jurisdiction under Section 397 Cr.P.C., cannot act as a second appellate court unless it is convincingly shown that the conviction and sentence passed by both the courts below are perverse.

5. In the instant case, it is seen from the records that the accused did not deny his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 & 139 of

N.I. Act unless the contrary is proved by the accused.

6. Heard Mr.Sunny Sheen Akara, learned counsel for the revision petitioner and Mr.R.Siva, learned counsel for the respondent.

7. Mr.Sunny Sheen Akara, learned counsel for the revision petitioner would contend that since the respondent / complainant is running an Auto Finance business in the name and style of M/s.Dharane Auto Finance and the cheque was also issued only in favour of the Auto Finance Company, it has to be presumed that the respondent / complainant had lent a sum of Rs.6,00,000/- only for purchase of a vehicle. When the complainant has not adduced any supporting documents in this regard the order of conviction passed by the trial court cannot be sustained. It is also his contention that there is no consideration for the cheque (Ex.P1).

8. In the trial court the defence taken by the accused was that he and the complainant were partners in the partnership firm M/s.Velan Apparels and that the accused retired from the partnership firm on 31.03.2017. According to him, the cheque (Ex.P1) issued as a security while the accused was a partner has been misused by the complainant for the purpose of filing the present complaint.

9. It is to be pointed out that the accused had retired from the partnership firm on 31.03.2017 as is seen from the evidence of the complainant (P.W.1). The loan transaction between the complainant and the accused took place on 25.03.2017. If really, the accused had handed over the cheque as a security for the partnership firm business, he would have definitely asked the complainant to hand over the signed blank cheque to him at the time of his retirement. The accused had not also issued any notice to the complainant requesting him return the cheque. In the circumstances, it is difficult to accept the contention of the accused that the cheque was issued only as a security for the partnership firm. Now it is contended by the learned counsel for the respondent /

complainant that since the name of the respondent / complainant suggests that it is an Auto Finance business, it has to be presumed that the amount was paid only for purchase of a vehicle. This contention cannot be accepted as this plea was not at all taken before both the courts below. Moreover, the accused is not a stranger and infact both the complainant and the accused were partners in a firm. Merely because the cheque was issued in the name of M/s.Dharane Auto Finance this Court cannot presume that the complainant had lent only for purchase of a vehicle, as contended by the counsel for the accused.

10. As already observed that the accused had not disputed his signature on the cheque (Ex.P1) and he did not also choose to send any reply to the statutory notice issued by the complainant. All the observations made by both the Courts below are perfectly in order and therefore, I do not see any reason to interfere with the concurrent findings recorded by them.

11. In the result,

i. The Criminal Revision Case is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

ii. The judgement dated 12.02.2020 passed in Crl.A.No.147/2019 by the Principal Sessions Judge, Erode and the judgement dated 23.03.2019 passed in S.T.C.No.103/2018 by the Judicial Magistrate, Fast Track Court No.I, Erode, is confirmed.

18.06.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

To

1.The Principal Sessions Judge, Erode.

2.The Judicial Magistrate, Fast Track Court No.I, Erode.

3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.

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