IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

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

Crl.R.C.No.1014 of 2020 and
Crl.M.P.Nos.7039 & 7051 of 2020

C.Balu ... Petitioner / Accused

Vs.

R.M.Meiyappan ... Respondent / Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the Judgment and orders, dated 29.11.2019 in C.A.No.206/2019 passed by the XVII Additional Judge, City Civil Court, Chennai, confirming the Judgment and orders, dated 23.04.2019 in C.C.No.2068/2016 passed by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

For Petitioner : No appearance
For Respondent : Mr.R.Mahadevan

ORDER

Challenging the Judgment and Orders, dated 29.11.2019 passed in C.A.No.206/2019 by the learned XVII Additional City Civil Court, Chennai, the present Criminal Revision is filed by the petitioner/Accused.

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 appeal would also be indicated.

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

i. The accused was known to the complainant through one of his friends Surendran. The accused borrowed a sum of Rs.1,50,000/- from the complainant and executed a Promissory note (Ex.P1) on 15.01.2014, promising to repay the principal together with interest @ 12% per annum. However, the accused did not pay any amount either towards principal or interest.

ii. After much persuasion by the complainant, the accused issued a Cheque bearing No.308130, dated 15.05.2016 (ExP2) for a sum of Rs.1,74,000/- drawn on Syndicate Bank, Pattabiram Branch, Chennai, in favour of the complainant.

iii. When the cheque was presented, for collection through his bankers viz., Federal Bank, George Town Branch, Chennai, by the complainant on 09.06.2016, it was returned for the reason 'insufficient funds' as is evidenced by the cheque return memo, dated 10.06.2016 (Ex.P3).

iv. Thereafter, the complainant issued a statutory notice, dated 01.07.2016 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.

v. The accused though received the notice as is evidenced by the postal acknowledgment Card (Ex.P5), did not come forward to make good the payment and did not send any reply.

vi. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act in C.C.No.2068/2016.

vii. The learned Metropolitan Magistrate, took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C.

viii. 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 the accused pleaded not guilty, the case was posted for trial.

ix. The complainant examined himself and marked Ex.P1 to Ex.P5.

x. The accused, when questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence and examined himself and marked Ex.D1 and Ex.D3.

xi. After full contest, the learned Metropolitan Magistrate, vide his Judgment dated 23.04.2019, 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 ten months and to pay compensation of Rs.1,74,000/-, together with interest @ 9% per annum within one month from the date of the order, in default, to undergo simple imprisonment for two months.

xii. Aggrieved over the same, the accused filed an appeal in C.A.No.206/2019 before the XVII Additional City Civil Court, Chennai.

xiii. The learned XVII Additional City Civil Court, Chennai, 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 accused.

4. There is no representation for the revision petitioner. Heard Mr.R.Mahadevan, learned counsel for the respondent.

5. At the outset it may be observed that the accused did not deny his signature either on the Promissory note (Ex.P1) or on the cheque (Ex.P2). Once the signature is admitted on the cheque, there is a presumption under Sections 118 & 139 of Negotiable Instruments Act, unless the contrary is proved.

6. In the instant case, the accused did not issue any reply though notice was sent to his residential address by the complainant. The contention of the accused before the trial Court was that he handed over blank cheques and blank promissory notes to the complainant at the time of borrowing a sum of Rs.60,000/- from the complainant and that one of the cheques had been misused by him for the purpose of filing the present private complaint under Section 200 Cr.P.C. However, the revision petitioner/accused did not adduce any evidence to substantiate his contention in this regard. In fact both the Courts below had dealt with this aspect and had come to a conclusion that the accused had not rebutted the presumption under Sections 118 and 139 of the Negotiable Instruments Act. The appellate Court in Paragraph Nos.18 and 19 had observed thus:

> *"18. Therefore, the Trial Judge had rightly concluded that the complainant had already become entitled to a presumption that the cheque was issued for a legally enforceable 'debt or liability' and that it is supported by consideration and when the burden had shifted to the accused/appellant to prove and establish that*

the cheque issued by him was not supported by consideration and that it was not issued for any legally enforceable 'debt or liability', he had failed to produce any probable defence except the ipsi dixit of his ocular evidence that too taken at a belated stage. Therefore in this case, as elaborately discussed by the Learned Trial Judge, not an iota of evidence is coming forth from the side of the accused. The rebuttal evidence as contemplated under Sec. 139 of the Negotiable Instruments Act is not proved beyond any reasonable doubt. The accused having accepted issuance of the cheque had failed to put forth any rebuttal evidence which can be accepted by this Court. Therefore, in such circumstances, his defence that the said cheque was misused and not for a legally enforceable debt and also about the non service of legal notice by the complainant has no legs to stand nor had he rebutted the presumption that was made available to the complainant by way of 'preponderance of probabilities' and therefore the citation placed by the learned counsel for appellant reported in CDJ 2019 SC 1201 in Uttam Ram ..vs.. Devinder Singh Hudan and another is not applicable for the present case. Further the appellant has placed much reliance on the improper issuance of the legal notice on him for which the trial court has come to a well reasoned *conclusion that the said fact was not let in during evidence and the same was also not proved by the appellant. Even the appellant has failed to prove as to why he has not taken any steps for issuance of stop payment to the Bank. For the reasons stated earlier, there is no ground for this court to decide differently and to differ from the view taken by the Trial Court in holding the appellant guilty of the offence with which he was charged. Therefore this Court affirms the conviction and sentence imposed on the appellant by the Trial Court and dismisses the appeal. In view of the above discussion, this court is of the view that the well discussed Judgment of trial court deserves to be confirmed.*

19. Therefore, the issuance of cheque has been established by the complainant. As discussed by the learned Metropolitan Magistrate in the judgment reported in 2010 (2) MWN (Cr.) DCC 5 (SC) – Rangappa Vs. Sri Mohan, if the complainant has established that the cheque has been issued from the account of the accused, presumption has to be raised in favour of the complainant.

The above observation of the lower appellate Court cannot be found fault with and therefore the present Criminal Revision stands dismissed.

7. In the result,

i. the Criminal Revision Case is dismissed.

ii. the Judgment dated 29.11.2019 in C.A.No.206/2019 passed by the XVII Additional City Civil Court, Chennai and the Judgment dated 23.04.2019 in C.C.No.2068/2016 passed by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, are hereby confirmed.

iii. The Revision Petitioner / accused is directed to surrender before the trial Court viz., the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

Consequently, connected miscellaneous petitions are closed.

18.07.2024

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes / No
vum

R. HEMALATHA, J.

vum

To

1.The XVII Additional Judge,
City Civil Court, Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai

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