IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

Crl.R.C.No.891 of 2019

P.Vembanan ... Petitioner/Appellant/Accused

vs

C.Thirupathi ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition is filed under Sections 397 and 401 of Criminal Procedure Code to set aside the conviction imposed by the judgment dated 12.07.2019 made in C.A.No.337 of 2018 on the file of the Learned II Additional District Sessions Court, Erode District at Erode, confirming the conviction imposed in judgment dated 08.10.2018 made in S.T.C.No.167 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court No.I), Erode by allowing this Criminal Revision Petition.

For Petitioner : Mr.Arun prasad for M/s.M.Guruprasad
For Respondent : Mr.M.Vignesh for
Mr.C.S.Saravanan

ORDER

Being aggrieved by the concurrent findings of conviction and sentence as mentioned below, the accused has preferred this Criminal Revision Case.

2. The accused herein has preferred this criminal revision case against the concurrent findings of conviction rendered for the offence under Section 138 of the Negotiable Instruments Act.

Conviction:

S.NO	CASE NO.	COURT	DETAILS OF JUDGMENT
1.	S.T.C.No.167 of 2014	Judicial magistrate , Erode	Convicted the accused u/s 138 of Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for a period of one year and to pay compensation of Rs.5,36,400/- in default to under go 2 months simple imprisonment.
2.	Crl.A.No.337 of 2018	II Additional District and Sessions Judge, Erode.	Confirmed the judgment of Trial Court.

3. The case of the complainant in brief is as follows.

3.1.The accused borrowed a sum of Rs.5,36,400/- as hand loan from the complainant on 19.10.2013, promising to repay the same in 6 installments and towards the discharge of the said amount, the accused issued a post dated cheque drawn on ICICI Bank, Erode Branch, in Cheque No.362301 dated 26.10.2013 for a sum of Rs.89,400/-,

Cheque No.362302 dated 02.11.2013, for a sum of Rs.89,200/-,

Cheque No.362303 dated 09.11.2013, for a sum of Rs.89,100/-,

Cheque No.362304 dated 16.11.2013 for a sum of Rs.89,500/-,

Cheque No.362305 dated 23.11.2013 for a sum of Rs.89,900/- and

Cheque No.362306 dated 30.11.2013 for a sum of Rs.89,300/-.

3.2.Upon the assurance given by the accused, the cheques were presented for collection on 30.11.2013 through his bank, the Karur Vysya Bank, Erode branch.

3.3.The cheques were dishonored and returned on 03.12.2013 on the ground “Funds Insufficient”.

3.4.The complainant issued a legal notice dated 30.12.2013 calling upon the accused to pay the cheque amounts.

3.5.The said notice was received by the accused on 31.12.2013, but the accused neither repaid the amount nor issued a reply notice.

3.6.Alleging that the accused, without making arrangements for the funds in his account, intentionally issued the cheques, and on notice, he has not come forward to settle the amount, the complainant has lodged the present complaint stating that he is liable to be punished under Section 138 of the Negotiable Instruments Act (hereinafter referred as N.I.Act).

4. The defence theory put forth by the accused is that, in fact, the cheques were given to Thirumoorthy, who was the business partner of the accused. When the accused was not in good terms with said Thirumoorthy, the complainant has misused the cheques and by utilising the cheques, a false case is foisted against him. The amount said to have been given issued is in fraction, which creates a doubt.

5. The learned counsel appearing for the appellant/accused vehemently contended that the cheques were given to Thirumoorthy who is his business partner and the accused is not in terms with the said Thirumoorthy and therefore he is not in a position to examine him to prove his case. The learned counsel would further contend that no person would give loan in fraction of amount.

6. It is his further argument that to prove the source of income, the Income Tax returns Ex.P10 has been filed. The Income Tax return pertaining to the financial year 2014-2015 cannot be taken into account for the purpose of proving the source of income of the complainant for the year 2013 and pleaded to set aside the conviction and sentence passed by the trial Court which was confirmed by the appellate Court as mentioned supra.

7. Per contra, the learned counsel appearing for the respondent

strenuously argued that once signatures in the cheques are admitted, presumption under Section 139 of N.I.Act comes into play. The accused has not rebutted the presumption suitably. The contention of the accused is that the cheques were issued to his business partner Thirumoorthy, and since because he is enemical to the accused, he is not in a position to examine him, which cannot be accepted. The loan amount given in fraction cannot be the reason to doubt the veracity of the complaint and pleaded to confirm the concurrent findings of both the trial Court as well as the appellate Court.

8. At trial, the complainant has examined himself as P.W1. The Deputy Branch Manager of ICICI Bank was examined as P.W2. The hand writing expert as P.W3 and 12 documents were marked. On the accused side no witness was examined.

9. It is the evidence of P.W1 that he knows the accused Vembanan. On 19.10.2013, the accused received an amount of Rs.5,36,400/- as debt and promised to repay the said debt in 6 installments. He issued 6 post dated cheques drawn on ICICI Bank, Erode, as mentioned supra. It is the further evidence of P.W1 that he presented the cheque on 30.11.2013 to his banker Karur Vysya Bank, Erode branch. All the cheques Ex.P.1 to Ex.P6 were returned on 03.11.2013 with memorandum (6 in nos.), as “Funds Insufficient”

which is Ex.P7. He issued legal notice on 30.12.2013 calling upon the accused to repay the money and the notice was received by him on the next day. The accused neither issued a reply nor repaid the debt.

10. Alleging that, the accused, with the knowledge to defraud the complainant, did not arrange the funds to honor the cheques issued by him and on receipt of legal notice, he did not settle the amount and thereby he is liable to be punished under Section 138 of N.I.Act.

11. It is the evidence of P.W1 that they have got 3/4 acres of agricultural land in his father's name. He cultivates the land if rain comes. Further the evidence of P.W1 is that he knows the accused for the past 10 years. He has also given the accused address as Kasthuriba Village near Arachalur Road, No.48, Sivanathapuram, Erode. P.W1 would state that the accused is an agriculturalist and he is also a firewood seller Ex.P.10 confirms the facts that he is doing business in the name and style of Arul Traders and the Income Tax return for the assessment year 2014-2015 for the said Proprietory concern. It is his evidence that out of his personal income and through the agriculture and business income, he gave loan to the accused.

12. It is the evidence of P.W2, the Deputy Branch manager of ICICI bank, who is the banker of the accused that an account opening form given by

the accused to his banker is Ex.P11. P.W3 is the hand writing expert. As per the order of the Court the 6 cheques Ex.P1 to Ex.P6 were received by him and he has filed a report Ex.P12 by comparing the admitted signatures of the accused. He compared the disputed signatures with the magnifier and Video Spectral Comparator and given the report that signatures found in the cheques have been put by the person who gave the sample signatures(accused).

13. Through the evidence of P.W1 and P.W3, hand writing expert, it is proved that the signatures found in Ex.P1 to Ex.P6 cheques are the signatures of the accused.

14. The debt amount is Rs.5,36,400/-. From the evidence of P.W1, it appears that he is an agriculturist and he is doing Textile business in the name and style of Arul Traders which is evidenced by Ex.P10.

15. Once the signature found in the cheques have been proved to be that of the accused, then the presumption under Section 139 comes into play. The said presumption is rebuttable one. The Hon'ble Supreme Court in Rangappa Versus Sri Mohan, reported in CDJ 2010 SC 418 has observed that,

> *"Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-*

expenses. Since the accused did admit that the signature on the cheques was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant"

`16. The accused may rebut the presumption through oral and documentary evidence or even through cross examination of P.W1. If his defence is probable, then the presumption has to fall.

17. It is useful to refer to the observations made by the Hon'ble Supreme Court in Kishan Rao Vs. Shankargouder reported in (2018) 8 SCC 165, wherein the Apex Court has observed that,

"Accused may adduce evidence to rebut presumption under Section 139. But mere denial regarding evidence of debt shall not serve any purpose. In the event accused is able to raise a probable defence which create doubt with regard to the existence of a debt or liability, the presumption may fall"

18. Law is well settled that the accused may rebut the presumption under Section 139 of the N.I.Act by preponderance of probabilities. It has come on record that the cheques (Ex.P1 to Ex.P6) were given to Thirumoorthy. The accused states that the said Thirumoorthy is his business partner and as he is in enemical terms, he is not in a position to prove the same. His

explanation is totally not plausible. It is not the case of the accused that at least on receipt of legal notice, he did not take any legal steps against Thirumoorthy for having been mis-used the cheques which shows that the said contention was put forth without any basis.

19. While the accused was questioned under Section 281 of Criminal Procedure Code, he pleaded not guilty and claimed to be tried. When he was questioned under Section 313 of Criminal Procedure Code , he has given answers that false case was foisted against him.

20. Therefore, relying upon the oral evidence of the complainant side coupled with the documents, it is clear that that the accused has not rebutted the presumption arose in favour of the complainant by preponderance of probabilities. And based upon the aforesaid observations, this Court is of the considered view that the accused utterly has failed to prove the case by preponderance of probabilities. The plausible conclusion is that the accused issued the cheques to P.W1 for a legally enforceable debt and when the cheques were presented for encashment to the accused/banker, they were returned on the ground “Funds Insufficient”. When he was put on notice calling upon him to repay the said amount, he has neither issued reply nor repaid the debt.

21. As the accused has failed to prove his case by preponderance of probabilities, the accused is guilty of the offence punishable under Section 138 of N.I.Act.

22. In fine, Criminal Revision Case stands dismissed. In the result, the judgment made in S.T.C.No.167 of 2014 on the file of the learned Judicial Magistrate (Fast Track Court No.I), Erode, stands confirmed.

20.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
dpa

To

1. The II Additional District Sessions Court, Erode
2. The Judicial Magistrate (Fast Track Court No.I), Erode

R.KALAIMATHI, J.,

dpa

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