BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.01.2024

CORAM
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). No.750 of 2022
and
Crl.M.P(MD). Nos.9209 and 9210 of 2022

T.Rajamuthu ... Petitioner/Appellant/Accused

Vs.

S.Shahul Hameed ... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the judgment dated 30.05.2022 passed by the Sessions Judge, Mahila Court, Tiruchirappalli in C.A.No.14 of 2021 confirming the judgment dated 16.03.2020 made in STC.No.183 of 2019 on the file of the Judicial Magistrate Court, Manapparai and set aside the same.

For Petitioner : Mr.B.Prahalad Ravi
For Respondent : Mr.R.Anandharaj

ORDER

The accused in S.T.C.No.183 of 2019 filed this revision petition challenging the conviction passed by the learned Judicial Magistrate, Manapprai in S.T.C.No.183 of 2019 confirmed by the Sessions Judge, Mahila Court, Tiruchirappalli ,in Crl.A.No.14 of 2021.

2.The respondent initiated the proceedings against the petitioner under Section 138 of Negotiable Instruments Act for the alleged dishonour of cheque issued by him dated 16.04.2019. According to the respondent, the petitioner borrowed a sum of Rs.2,00,000/- (Rupees Two Lakhs) from him on 10.01.2019 for his family expenditure. To discharge the same on 16.04.2019, he gave a cheque drawn on the Kanara Bank bearing No.631972 for the value of Rs.2,00,000/-. The respondent presented the cheque in his bank and the same was returned for insufficiency of fund. Therefore, he issued the statutory notice under the Negotiable Instruments Act. The same was received by the petitioner. But he did not send any reply. Thereafter, the respondent filed the complaint before the learned Judicial Magistrate, Manapparai under Section 138 of Negotiable Instruments Act. The same was taken on file by the leaned Judicial Magistrate, in S.T.C.No.183 of 2019. After taking the cognizance, the trial Court issued summons to the petitioner. The petitioner after appearing before the Court, denied all the allegations and pleaded not guilty and hence trial was commenced.

3.The respondent, in order to prove his case produced P.W.1 and P.W.2 and Ex.B1 to B5. On the side of the petitioner, D.W.1 was examined. The learned trial judge after considering the evidence on the side of the respondent and the petitioner and also the documents adduced by the respondent, convicted the petitioner under Section 138 of Negotiable Instruments Act, and sentenced him to undergo 12 (Twelve) months Simple Imprisonment with a compensation of Rs.2,00,000/- in default, to undergo 2 (Two) weeks simple imprisonment. Challenging the same, the petitioner filed an appeal before the Sessions Mahila Court, Tiruchirappalli, in C.A.No.14 of 2021. The same was also confirmed by the Appellate Judge. Aggrieved over the same, he filed the present revision case.

4.The learned counsel appearing for the petitioner submitted that there was no debtor relationship between the petitioner and the respondent. The petitioner is the close friend of the Mahalakshmi Finance Corporation. The petitioner earlier had some transactions with Mahalakshmi Finance Corporation. The said

Mahalakshmi Finance Corporation misused the cheque issued for security for the amount received as debt from the Mahalakshmi Finance. To substantiate the same, he appeared before the trial Court and deposed before this Court and the same was not properly considered by the learned trial Judge and the Appellate Judge. As per the order of the Honourable Supreme Court, the defence of the accused need not be established beyond reasonable doubt. It is to be established by preponderance of probabilities. In this case, the accused specifically took a plea that he has no relationship with the respondent and hence, the cheque issued to the Mahalakshmi Finance was misused. The same was not considered by the learned trial Judge and the Appellate Judge and hence, this Court is to set aside both the orders of the Courts below and allow the revision.

5.The learned counsel appearing for the respondent submitted that the issuance of cheque is admitted, he never denied the signature in the cheque. In order to prove his defence, no evidence was produced. No circumstances are also available from the evidence of the petitioner. In the said circumstances, the defence is not proved. Next aspect is the plea without proof is not legally sustainable. The learned counsel for the respondent further submitted that even in the examination of D.W.1 there was no single statement relating to the

Mahalakshmi Finance. In the said circumstances, the defence was not established and also to prove the transactions, P.W.2 is the relative of both accused and respondent. His evidence is believed by both the Courts below and hence, there was no infirmity in the judgment passed by the learned trial Judge and also the Appellate Judge and hence, he seeks for the confirmation of the sentence and imprisonment passed by the learned trial Judge and Appellate Judge.

6.This Court considered the rival submission and also perused the relevant records and also precedents relied upon them.

7.The only defence raised by the learned counsel appearing for the petitioner is that the cheque was issued to the Mahalakshmi Finance. The said owner of the Mahalakshmi Finance is the friend of the respondent. After discharging of the debt towards the liability of Mahalakshmi Finance, the said finance company did not return the cheque. The said cheque was misused by the Mahalakshmi Finance corporation and the respondent. But his following evidence did not support his case:

> *“10.01.2019ம் தேதி இவ்வழக்கின் புகார்தாரர் அவர்களிடமிருந்து ரூ.2 லட்சம் கடன் பெற்றேன் என்று கூறுவது தவறாகும். அதேபோல் நான்*

16.04.2019ம் தேதி ரூ.2 லட்சத்திற்குண்டான காசோலையை அவரிடம் கொடுத்தேன் என்று சொல்வது தவறு. ஆகவே புகார்தாரருக்கு நான் பணம் கொடுக்க வேண்டியதில்லை. என் மீதான வழக்கு தள்ளுபடிக்குரியது".

From the above evidence, it is clear that he has neither deposed that he entrusted the cheque to the Mahalakshmi Finance as a security and the same was misused by the said Mahalakshmi finance corporation through the respondent nor he adduced any evidence and establish the circumstances to presume the same. In the said circumstances, the presumption under Section 139 of the NI Act is never rebutted.

8. It is settled principle that mere denial of issuance of cheque to discharge the liability is not sufficient to rebut the presumption under Section 139 of NI Act. He either should have produced evidence or bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would do, under the circumstances of the case. In this aspect it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106 at page 118***

15. *So far the question of existence of basic ingredients for drawing of presumption under Sections 118 and 139 of the NI Act is concerned, apparent it is that the appellant-accused could not deny his signatures on the cheques in question that had been drawn in favour of the complainant on a bank account maintained by the accused for a sum of Rs 3 lakhs each. The said cheques were presented to the bank concerned within the period of their validity and were returned unpaid for the reason of either the balance being insufficient or the account being closed. All the basic ingredients of Section 138 as also of Sections 118 and 139 are apparent on the face of the record. The trial court had also consciously taken note of these facts and had drawn the requisite presumption. Therefore, it is required to be presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e. the complainant received the same in discharge of an existing debt. The onus, therefore, shifts on the appellant-accused to establish a probable defence so as to rebut such a presumption.*

17. *On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the* *plea that the consideration did not exist. This Court has, time and again, emphasised that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfil the requirements of rebuttal as envisaged under Sections 118 and 139 of the NI Act.*

*ii) In **Kumar Exports [Kumar Exports v. Sharma Carpets**, (2009) 2 SCC 513 (SCC pp. 520-21, paras 20-21)*

"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor

contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the *statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."*

9. In this case, P.W.1 clearly deposed before the Court that D.W.1 borrowed the money of Rs.2,00,000/- on 10.01.2019 and to discharge the same, he issued the cheque on 16.04.2019. The said evidence is corroborated by P.W.2. P.W.2 is the relative of both the accused and the respondent. In his evidence, he clearly deposed about the transaction. In the said circumstances, the respondent/complainant established the foundational facts namely lending of the amount to the petitioner and also the petitioner gave the cheque to the respondent to discharge his debt. Hence, the legal presumption under Section 139 of Negotiable Instruments Act would arise. To dispel the said presumption, the petitioner took a stand that the respondent misused the cheque issued to the Mahalakshmi Finance by the petitioner but as held above the same was not proved. In the said circumstances, this Court finds no merit in the contention of

the petitioner and also no case is made out to interfere with the concurrent finding made by the Courts below.

10.It is settled principle that unless there is a perversity in the finding of the courts below, this Court has no jurisdiction to interfere with the finding of the Courts below and the same is fortified by the following decisions of the Hon'ble Supreme Court:

In ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri*,** reported in **1999 SCC (Cri) 275 at page 454**

> ***5.*** *Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it*

would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.

(ii) in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 at page 205

> ***16.*** *It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.*

11. This Court finds no merit in the revision and hence, this revision is dismissed. The orders passed in S.T.C.No.183 of 2019 dated 16.03.2020 by the learned Judicial Magistrate, Manaparai and Crl.A.(MD).No.14 of 2021, dated 30.05.2022 by the learned Sessions Judge, Mahila Court, Tiruchirappalli are hereby confirmed. Consequently, connected Criminal Miscellaneous Petitions are closed.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJL

To

1.The Sessions Judge, Mahila Court,
Tiruchirappalli.

2.The Judicial Magistrate,
Manapparai.

3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN, J.

PJL

Pre-delivery Order made in

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and
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