



Crl.R.C.(MD).No.513 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced On	:	27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.513 of 2019
and
Crl.M.P(MD).No. 6779 and 6780 of 2019

S.K.Mariappan

... Petitioner/Appellant/Accused

Vs.

S.Kennedy

... 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 pertaining to the order dated Crl.A.No.87/2017 dated 28.06.2018 on the file of the learned Principal Sessions Judge, Thoothukudi, confirming the order dated 05.05.2017 made in C.C.No.66/2016 of Fast Track Court Magisterial Level, Thoothukudi, and allow the above revision petition.

For Petitioner : Mr.C.Jeganathan

For Respondent : Mr.S.Muthumalai Raja



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ORDER

The petitioner is the accused in C.C.No.66 of 2016 on the file of the learned Judicial Magistrate, Thiruvaiyaru. The learned Judge, Fast Track Court (Magisterial Level) Thoothukudi, passed the conviction against him under Section 138 of Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) (the cheque amount) as compensation to the complainant within a period of one month, in default, to undergo further one month of simple imprisonment. Aggrieved over the same, the petitioner herein has filed an appeal before the learned Principal Sessions Judge, Thoothukudi, in Crl.A.No.87 of 2017. The learned Appellate Judge confirmed the conviction imposed on the petitioner by the trial and reduced the sentence of imprisonment from one year simple imprisonment to six months of simple imprisonment. Challenging the said concurrent findings, the petitioner filed this criminal revision case.

2. According to the prosecution, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act stating that from 14.01.2015 to 23.02.2015, the petitioner had borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as a loan for his urgent family expenses and business requirement



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with promise to pay 2% of interest within a period of six months. Thereafter, he failed to pay the interest and the principal. Therefore, he approached the respondent. The respondent on 19.10.2015 failed to pay the principal amount and gave the cheque bearing No.671939 drawn on Tamil Nadu Mercantile Bank, Mullakadu Branch, Thoothukudi District. The respondent presented the cheque before the bank and the same was returned for insufficient fund on 20.10.2015. Thereafter, the respondent issued a legal notice as per the Act, on 26.10.2015 to the petitioner, through the registered post, which was also returned as no such address. Thereafter, he filed a complaint under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate has taken the case on file in C.C.No.66 of 2016. He issued a summons to the accused. After his appearance, he served the 207 Cr.P.C. Documents. After that, learned trial Judge framed the necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.

3. The respondent/defacto-complainant himself examined as P.W.1 and one another witness was examined as P.W.2 and Marked Ex.P1 to Ex.P.16. On the side of defence, D.W.1 and D.W.2 were examined and marked Ex.D1 to Ex.D4. The learned trial Judge after recording the above evidence, questioned the



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accused under Section 313 (1) Cr.P.C. The same was denied by the accused as false.

4. The learned trial Judge after considering the above evidence and documents convicted the petitioner and imposed sentence of imprisonment as stated above. Challenging the same, he preferred the appeal before the learned Principal Sessions Judge, Thoothukudi in Crl.A.No.87 of 2017. The same was also confirmed.

5. The learned counsel for the petitioner made the following submissions:

(i) Legal notice was also not served and hence, taking the cognizance without proof of service of notice is illegal.

(ii) The petitioner has no contact with the respondent. He borrowed some amount from one Rajendran, Sub Inspector of Police, and the same was attested by giving the cheque as a security. He requested to return the cheque, Rajendran told that he misplaced the same and thereafter, he did not take any action. The relationship of the Rajendran is admitted by P.W.1/respondent/defacto-complainant. Further, he has no means to pay the amount. To prove the payment, he has not produced any income tax return. In the said circumstances, he pleaded



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to acquit the accused.

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6. The learned counsel for the respondent submitted that the legal notice sent to the address mentioned in the complaint and summon was also served in the address as mentioned above. Therefore, he intentionally evaded the notice. Hence, the notice was returned as no such address. Hence, the submission of the learned counsel for the petitioner is false one and the same was properly appreciated by the learned trial Judge. The relationship between the petitioner and the respondent is denied without any material. Once the custody and the issuance of cheque was proved by the petitioner and when the same was substantiated with the material, it is the duty of the accused to rebut the presumption under Sections 138 and 139 of the Negotiable Instruments Act. The said aspect was considered by the learned trial Judge and the learned appellate Judge in a proper manner. Further, he submitted that he has not taken any steps to prove that he borrowed the money from the said Rajendren and without any evidence, the statutory presumption under Section 139 of the Negotiable Instruments Act is not rebutted. Mere pleading is not sufficient to disbelieve the presumption under Sections 138 and 139 of the Negotiable Instruments Act.



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7. The respondent in his cross examination clearly deposed that he had vast extent of agricultural land and is doing cultivation in his lands. Therefore, the fact that he had means to pay the amount, is also proved. In all aspects, this revision case is to be dismissed.

8. This Court considered the rival submissions made on either side and perused the materials available on record and also considered the impugned order.

9. As per Section 27 of the General Clause Act, if the registered notice is sent to the correct address, there is a presumption under Section 27 that it was deemed service. In this case, the petitioner has not denied the address mentioned in the complaint as not his residence place. Further, the same address was mentioned in the complaint. The summon was also served in the said address. In the said circumstances, the presumption under Section 27 of the General Clause Act and the service of summon to the address mentioned in the notice can be taken. This Court is inclined to accept the argument of the learned counsel for the respondent. Further, the petitioner herein has not adduced any evidence to dispel the statutory presumption under Section 27 of the General Clause Act.



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10. As rightly argued by the learned counsel for the respondent, P.W.1 in his cross examination clearly stated that he has vast extent of lands and is doing cultivation. Hence, the means of the respondent is also established. Further, as per the records and also the findings of both the Courts below, the petitioner has not proved the transaction between the said Rajendran, Sub-Inspector of Police with whom he handed over the cheque, without any correct material. In this said aspect, this Court has no reason to interfere with the concurrent finding rendered by both the Courts below. It is the case of the petitioner that he issued a cheque to the said Rajendran as a security for the amount borrowed by him. If it is the case, the petitioner is duty bound to prove the said fact either from the defence or from the circumstances available in the complainant's evidence and documents. Therefore, this Court finds no such records either to presume or to infer the transaction between the Rajedran and the petitioner. Further, the witness examined on the side of the defence has not also deposed the above facts. They were examined only to show that the cheque was old cheque. Mere fact, the cheque was a old cheque, cannot be the ground to dispel the presumption under Section 139 of Negotiable Instruments Act.



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11. In the said circumstances, both the Courts below correctly appreciated the above facts and law and recorded conviction under Section 138 of the Negotiable Instruments Act. Hence, this Court is not inclined to interfere with the concurrent findings and there was no perversity in the finding of both the Courts below.

12. Accordingly, this Criminal Revision Case stands dismissed. Consequently, connected criminal miscellaneous petition is closed.

27.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbm

To

1. The Principal Sessions Judge,
Thoothukudi.
2. The Judge,
Fast Track Court Magisterial Level,
Thoothukudi
3. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

sbn

Pre-delivery Order made in

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and

Crl.M.P(MD).Nos.6779 and 6780 of 2019

27.02.2024