IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.476 of 2021

S.V.Pandiyan .. Petitioner

Versus

A.Sathish .. Respondent

Prayer : Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., to set aside the conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.173 of 2019, dated 26.09.2019 confirming the judgment of the learned District Munsif and Judicial Magistrate, Valparai in S.T.C.No.499 of 2010, dated 29.04.2019 and allow this Criminal Revision Petition.

For Petitioner : Mr.J.Franklin

For Respondent : Mr.M.I.Javid Akbar

ORDER

This Criminal Revision challenges the judgment of the learned District Munsif-cum-Judicial Magistrate, Valparai, dated 29.04.2019, in S.T.C.No.499 of 2010, in which the petitioner was found guilty of an offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to undergo Simple Imprisonment for one year and pay a fine of Rs.5,000/-. In default, the petitioner was to undergo an additional three months of Simple Imprisonment. It also challenges the judgment of the learned I Additional District and Sessions Judge, Coimbatore, dated 26.09.2019, in C.A.No.173 of 2019, which confirmed the conviction and sentence imposed by the Trial Court.

2. The case of the complainant is that he knew the accused. For his business purposes, on 21.03.2008, the accused came to the complainant's house and obtained a sum of Rs.8,00,000 as a loan through cash, and executed a promissory note on a Rs.100 stamp paper. When the complainant demanded the return of the debt on 10.09.2010, the accused issued cheque

No.396721, drawn on Indian Bank, Tiruppur Overseas Branch, for the said sum of Rs.8,00,000/-. When it was deposited for collection on 20.09.2010, it was returned dishonoured with the endorsement 'insufficient funds' on 25.09.2010, which was informed by the bankers of the accused on 30.09.2010. On 16.10.2010, a legal notice was issued, received by the accused on 19.10.2010. Despite this, the amount was not paid within the statutory period, and the accused only issued a false reply on 28.10.2010, leading to the complaint.

3. After recording the sworn statement of the complainant, the case was taken on file and when summons were issued to the accused, copies were furnished, and the accused was questioned. The accused denied the allegations and stood trial. To establish the charge, the complainant examined himself as *P.W.1,* and the witness to the promissory note, *Selvam,* was examined as *P.W.2*. The promissory note executed for the receipt of a loan was marked as ***Ex.P-1***. The cheque was marked as ***Ex.P-2***. The memo

of dishonour was marked as ***Ex.P-3***. The return challan was marked as ***Ex.P-4***. The demand notice issued by the complainant was marked as ***Ex.P-5***. The acknowledgment card was marked as ***Ex.P-6***. The reply notice issued by the accused was marked as ***Ex.P-7***. When questioned about the incriminating evidence on record under Section 313 of Cr.P.C., the accused denied it as false. Subsequently, the accused examined himself as *D.W.1*. The Power of Attorney executed by the accused in favor of *Vadivelu* was marked as ***Ex.D-1***. The sale agreement between *Vadivelu* and *Murugesan* was marked as ***Ex.D-2***. The cancellation of the Power of Attorney was marked as ***Ex.D-3***. The deposition of the complainant in the connected matter was marked as ***Ex.D-4***. Thereafter, the Trial Court considered the case of the parties and noted that the debt was duly proved by the promissory note and by examining the witness to the promissory note. With the presumption in favor of the complainant, the Trial Court disbelieved the accused's claim that the blank stamp paper was given only to *Vadivelu* and that it was being misused. The court convicted the accused under Section

138 of the Negotiable Instruments Act, 1881, and sentenced him accordingly.

4. Aggrieved by this, the petitioner filed an appeal in Crl.A.No.173 of 2019, and the Appellate Court, after re-evaluating the evidence, agreed with the Trial Court and confirmed the conviction and sentence imposed on the accused. The present Criminal Revision Case is filed against this.

5. Heard *Mr.J.Franklin*, learned Counsel for the petitioner and *Mr.M.I.Javid Akbar*, learned Counsel for the respondent.

6. The first contention of the learned Counsel for the petitioner is that, based on the judgment of the Kerala High Court in ***P.C.Hari Vs. Shine Varghese and Anr.*** (Criminal Revision Petition No.408 of 2024), where the Kerala High Court held that any debt given in cash in violation of the provisions of the Income Tax Act cannot be regarded as a legally enforceable

debt, and since in this case the complainant himself admitted that he did not report the amount in his Income Tax Returns and further, it is admitted that the entire loan of Rs.8,00,000/- was given in cash, the petitioner should be acquitted of the case based on this judgment.

7. The learned Counsel for the petitioner further submits that the complainant is said to have advanced a sum of Rs.8,00,000/-, for which he should have proved his capacity. He states that he owned a grocery shop and that his father gave him the money by pledging his mother's jewels. Since he does not have such a large amount, it is unexplainable that the complainant would pledge his mother's jewels and give the money to the petitioner. It is evident that when the loan was supposedly given in 2008, whether the cheque was issued for the same amount in 2010, the complainant explicitly admits that no interest was paid in the meantime.

8. The learned Counsel further submits that the complainant's

evidence regarding the fact that only the accused brought witness *P.W.2* to the promissory note has turned out to be false. It is evident that *P.W.2* himself clearly admits that he has a residence-cum-shop in Valparai near the complainant's location. Therefore, there is no question of the accused taking *P.W.2* to witness the loan transaction and execution of the promissory note. The learned Counsel points out, with reference to the promissory note, ***Ex.P-1***, that the stamp paper was purchased on the same date, i.e., 21.03.2008. The stamp paper was bought from a vendor in Musiri. Therefore, it is highly unlikely that the promissory note was written on the same day at Valparai, at the house of the complainant, after borrowing the amount. In any case, the complainant failed to prove that such a large amount was actually advanced. When the accused cross-examined the complainant and also introduced evidence and marked relevant documents to cast reasonable doubt on the case, particularly that the accused had handed over all these blank forms and documents only to *Vadivelu,* the Trial Court and the Appellate Court erred by completely ignoring this. Their findings violate the directive set by the Hon'ble Supreme Court of India in ***Rangappa Vs. Sri Mohan***[1], which states that even through cross-examination, the accused can rebut the presumption. The learned Counsel also intends to produce connected proceedings filed by *Sivamani* against the accused, where the suit was initially dismissed by the Civil Court but the First Appeal was allowed by the Division Bench (of which I am also a party) in A.S.No.13 of 2017. Accordingly, it appears that the promissory notes and blank forms given by the accused have been misused.

9. Per *contra*, the learned Counsel for the complainant would submit that the complainant has not only produced the cheque in which the signature of the accused is not disputed, but also the borrowal is further evidenced by ***Ex.P-1*** promissory note. The witness to the promissory note was also examined as *P.W.2,* who had categorically deposed about the borrowal. Merely because the amount was advanced by cash does not make the loan illegal. On the contrary, even under the Income Tax Act, anyone

[1] 2010 KHC 4325

violating the rules is only liable for a fine. The entire transaction is not considered void or illegal even under the Income Tax Act. The learned Counsel further submits that, upon reading the judgment in A.S.No.13 of 2017, it is clear that this Court did not believe the petitioner/accused's version that all these promissory notes and blank forms are merely being misused. Therefore, by the very judgment produced by the learned Counsel for the petitioner in A.S.No.13 of 2017, this Court should uphold the conviction.

10. The learned Counsel would further submit that even from the reply notice itself, the contradictory versions regarding the borrowal of money and the transaction with *Vadivelu,* etc., can be observed. The learned Counsel for the complainant, by further taking this Court through the evidence of both the complainant and the accused, would argue that this is a case where the Courts below have assessed the evidence of the complainant against the defense. After a proper evaluation of the evidence, they have

reached a finding of guilt, which the Appellate Court also affirmed upon reappraisal. Therefore, in exercise of the revisionary jurisdiction, there is no reason for this Court to interfere. From the complainant's testimony, it is evident that he is financially secure and an Income Tax assessee. The complainant was involved in a business and also explicitly stated that the accused had other transactions prior to this one. While the case of the accused is that he was a cutting master, no evidence has been presented to support this. On the other hand, the complainant testified that the accused was engaged in real estate business, and through this connection, he became acquainted with the complainant, which led to the loan being advanced.

11. I have considered the rival submissions made on either side and perused the material records of the case.

12. It is true that the scope of this Court to interfere with the revision against conviction is very limited, especially when the Trial Court has

considered the evidence and the Appellate Court has reappraised the evidence and rendered their findings. Although the complainant has duly marked the cheque as well as the promissory note, the only concern I have is that the loan amount is Rs.8,00,000/-, which is on the higher side, considering the fact that the complainant owned a grocery shop and the accused is said to be involved in the real estate business, according to the complainant in Valparai town and nearby areas. Therefore, when the sum is substantial, though not in every case, the Court will insist upon the complainant to prove his capability; when the facts and circumstances warrant, the Courts will insist upon the same.

13. In this case, the complainant expressly admits that he did not disclose the current amount in his Income Tax Returns. Furthermore, he has explicitly stated that, upon the demand made by the accused, the complainant mobilized the amount from his father, who, in turn, pledged his mother's jewels to give it to the accused. In such a scenario, where the

complainant is said to have pledged the jewels, the version that he remained silent for a period of two years, during which not a single paise was repaid as interest, is a circumstance this Court considers.

14. The second point is that it is the clear case of the complainant that the accused came to his house on 21.03.2008 and signed the promissory note in the presence of *P.W.2.* It is also unusual for the parties to use a Rs.100/- stamp paper for the promissory note. Additionally, the stamp paper was bought in Musiri town, which is far from Valparai. Valparai is a hilly area, and it takes four hours to travel from Musiri to Valparai. There is no explanation that was coming forth in the Trial Court as to how the stamp paper was obtained, although the learned Counsel before this Court argued that it is common for stamp papers to be given in advance to local vendors acting as sub-agents of stamp vendors.

15. The third circumstance is that when the complainant was cross-

examined, his evidence about the accused's ability to repay the amount and whether he owns properties was very evasive regarding the background or the properties of the accused, which raises suspicion. It is true that I was a party to the Division Bench that reversed the judgment in O.S.No.570 of 2012 and decreed the suit. The standard of proof required for decreeing a suit based on a promissory note is only a preponderance of probability, whereas in a criminal case, where the accused faces imprisonment, the standard required is proof beyond a reasonable doubt.

16. Therefore, when the accused has successfully raised a doubt regarding the complete advancement of the loan, and in the absence of the complainant proving his capability, along with the fact that a large sum is said to have been advanced in cash and the complainant's admission regarding the Income Tax statements, etc., I believe that both the Trial Court and the Appellate Court completely ignored these submissions made on behalf of the accused and proceeded to convict the complainant solely based

on presumption.

17. The Hon'ble Supreme Court of India in ***Rangappa***'s case (cited *supra*) held that the presumption can be rebutted even through due cross-examination. Therefore, doubt regarding the capability and the manner in which the concerned transaction took place, as projected by the complainant, has been successfully established by the petitioner/accused. Consequently, I am of the view that this Criminal Revision Case should succeed.

18. In the result, this Criminal Revision Case is allowed. The conviction and sentence imposed by the judgment of the learned District Munsif and Judicial Magistrate, Valparai in S.T.C.No.499 of 2010, dated 29.04.2019, and confirmed by the judgment of the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.173 of 2019, dated 26.09.2019, are set aside. The accused is hereby ordered to be released forthwith as he is said to have been undergoing the sentence.

29.07.2025

Neutral Citation : no
grs

To

1. The I Additional District and Sessions Judge,
   Coimbatore.

2. The District Munsif-cum-Judicial Magistrate,
   Valparai.

D.BHARATHA CHAKRAVARTHY, J.,

grs

Crl.R.C.No.476 of 2021

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