



CrI. R.C. No. 945 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.03.2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Revision Case No.945 of 2019

C. Vidya

.. Petitioner

Versus

K. Srinivasan

.. Respondent

Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C., to set aside the Judgment of the learned II Additional District and Sessions Judge, Salem in C.A. No. 71 of 2017, dated 21.02.2019 confirming the Judgment of the learned Judicial Magistrate No. III, Salem, in STC. No. 4 of 2016 dated 31.05.2017.

For Petitioner : Mr. J. Franklin
For Respondent : Mr. S. Kalyanaraman

ORDER

This Criminal Revision Case had been filed to set aside the Judgment dated 21.02.2019 passed in Criminal Appeal No. 71 of 2017 by the learned II Additional District and Sessions Judge, Salem confirming the Judgment dated 31.05.2017 passed in STC. No. 4 of 2016 by the learned Judicial Magistrate No.III, Salem.



WEB COPY2. The brief facts, which are necessary to dispose of this Criminal Revision Case, are as follows:-

2.1. The Respondent herein, as Complainant, filed S.T.C. No. 4 of 2016 contending that the Petitioner/Accused approached him for extending financial assistance and at her request, he paid Rs.9,34,000/- on 02.03.2015 to meet her urgent needs. On receipt of the amount, the Accused assured to repay the amount with interest at the rate of 12% per annum. However, the Accused failed and neglected to pay the amount inspite of repeated demands. Ultimately, the Accused issued the cheque dated 18.11.2015 for Rs.9,34,000/- drawn on Lakshmi Vilas Bank, Shewapet Branch, Salem. The Complainant presented the cheque with his bankers – Indian Bank, Shevapet Branch, Salem for encashment. However, the cheque was dishonoured for the reason 'insufficient funds'. The Complainant therefore issued a legal notice dated 24.11.2015 calling upon the Accused to repay the cheque amount. Though the notice was received, the Accused had neither paid the cheque amount nor issued any reply notice. Therefore, the Complainant had filed the complaint in S.T.C. No. 4 of 2016 under Section 138 of The Negotiable Instruments Act, 1881.

2.2. When summons were issued to the Accused, she appeared before



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the learned Judicial Magistrate No.III, Salem and she was furnished with the copy of the complaint and other documents. When she was questioned about the offence committed under Section 138 of The Negotiable Instruments Act, 1881 she denied and pleaded not guilty. Therefore, trial was ordered. During the trial, the Complainant examined himself as P.W-1 and marked four documents as Ex.P-1 to Ex.P-4. On behalf of the defence, the Manager of Indian Bank, Shevapet Branch, Salem, where the Complainant was maintaining his Bank account, was examined as D.W-1 and one document was marked as Ex.D-1.

2.3. The trial Court, after analysing the oral and documentary evidence, passed the judgment of conviction and sentenced the Respondent-Accused to undergo simple imprisonment for a period of six months together with fine of Rs.5,000/-, failing which, to undergo simple imprisonment for one month.

2.4. Aggrieved by the Judgment of conviction dated 31.05.2017 passed in S.T.C. No. 4 of 2016, the Accused preferred Criminal Appeal No. 71 of 2017 before the Appellate Court and the same was also dismissed on 21.02.2019 confirming the conviction and sentence.

2.5. Aggrieved by the judgment dated 21.02.2019, passed in C.A. No. 71 of 2017 by the learned II Additional District and Sessions Judge, Salem



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confirming the Judgment of conviction and sentence passed by the learned Judicial Magistrate No. III, Salem, in STC. No. 4 of 2016, dated 31.05.2017 this Criminal Revision Case had been filed.

3. The learned Counsel for the Revision Petitioner/Accused submitted that the Petitioner/Accused was residing in a tin shed measuring 10x10 feet. She does not have the necessity to avail loan of such a huge amount to the tune of Rs.9,34,000/-. It is further stated that the husband of the Petitioner/Accused and the Complainant were friends. Under the pretext of getting loan from other sources, the Complainant obtained cheque from the husband of the Accused as security. Believing the words of the Complainant, the husband of the Accused handed over the cheque of the Accused to the Complainant, which was misused by the Complainant to file the Complaint under Section 138 of the Negotiable Instruments Act, 1881. The learned Counsel for the Revision Petitioner invited the attention of this Court to the evidence of the Complainant as P.W-1. In the cross-examination, P.W-1 admits that the Accused is residing in a land belonging to the temple, sharing a tin shed measuring 10x10 feet. Further, in the cross-examination, when the Complainant was questioned as to how the sum of Rs.9,34,000/- was made to the Accused, he had stated that he had only Rs.4,50,000/- with him and the rest



of the amount was withdrawn by him on that day from the Bank when the Accused approached him for loan. However, the Complainant had not produced the statement of account or any other evidence to show that Rs.9,34,000/- was paid to the Accused. Therefore, as a defence witness, the Accused summoned the Manager of the Bank, where the Complainant is maintaining his Savings Bank account. The said Manager, as D.W-1, in his evidence, deposed that between 01.01.2013 and 31.12.2014, there was no transactions in the account of the Complainant. Thus, it is glaringly evident that the statement of the Complainant that he had withdrawn part of the loan amount of Rs.9,34,000/- from the Bank is a false.

4. The learned Counsel for the Revision Petitioner further submitted that both the Courts below did not consider the evidence available in the cross-examination of P.W-1 and erroneously convicted the Accused based on the presumption available in favour of the Complainant that the signature in the cheque was not denied by the Accused.

5. Further, it is the submission of the learned Counsel for the Revision Petitioner that the Complainant does not have the resources to extend such a huge amount as loan. The Complainant himself had borrowed



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Rs.5,00,000/- from the Salem District Central Co-operative Bank, which was admitted by him in his cross-examination. Therefore, it is evident that the Complainant does not have the wherewithal to pay the sum of Rs.9,34,000/- as loan to the Accused. However, the Courts below erroneously convicted the Revision Petitioner/Accused. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the Judgment of Conviction recorded by the learned Judicial Magistrate No.III, Salem, which was confirmed by the learned II Additional District and Sessions Judge, Salem.

6. Per contra, the learned Counsel for the Respondent/Complainant submitted that the Revision Petitioner borrowed Rs.9,34,000/- from the Respondent/Complainant and when the amount was demanded, the cheque was issued. When the cheque was dishonoured, the notice dated 24.11.2015 was issued and it was received by the Accused, as could be evident from Ex.P-4, postal acknowledgment card. However, the Accused/Revision Petitioner did not send any reply. If the contentions of the Revision Petitioner that her cheque was misused by the Complainant, at the earliest point of time, she could have disputed it by sending reply notice. When reply notice is not issued, the presumption under Section 139 of The Negotiable Instruments Act, 1881 get stronger in favour of the Complainant. Further, the Revision



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Petitioner/Accused did not dispute her signature in the cheque. In such circumstances, the Courts below have presumed that the Complainant had proved the initial presumption available in his favour. The defence of the Accused is that her husband was a friend of the Complainant and on his request, the husband of the Accused issued the cheque of the Accused to enable him to arrange loan from third parties. If the loan was not arranged, the cheque issued by the Accused should have been returned or sought from the Complainant. However, no such request was made by the Respondent. Taking note of the above, the trial Court as well as the Appellate Court have rightly convicted and sentenced the Revision Petitioner/Accused over which interference of this Court is not warranted. Accordingly, the learned Counsel for the Respondent prayed for dismissal of the Criminal Revision Case filed by the Revision Petitioner/Accused as devoid of any merits.

Point for consideration:

Whether the Judgment dated 21.02.2019 passed in C.A.No.71 of 2017 by the learned Second Additional District and Sessions Judge, Salem, confirming the Judgment of the learned Judicial Magistrate No.III, Salem in STC.No.4 of 2016, dated 31.05.2017 is to be set aside as perverse?



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learned Counsel for the Respondent and perused the materials placed on record. Perused the Judgment passed by the learned II Additional District and Sessions Judge, Salem and the judgment passed by the learned Judicial Magistrate-III, Salem.

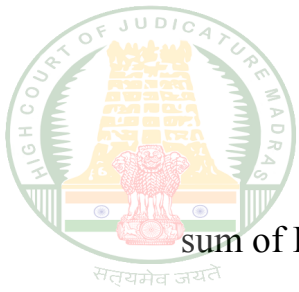
8. On consideration of the rival submissions, it is found that the learned Judicial Magistrate III, Salem, had on assessment of evidence stated that the statutory notice issued on behalf of the Complainant was received by the Accused but she had not replied. After issuance of summons, on appearance, the Accused was questioned regarding the Charge under Section 138 of the Negotiable Instruments Act, 1881. The Accused denied the charge levelled against her. When the Complainant was cross-examined, he had admitted that he did not have the wherewithal to extend such a huge amount as loan. However, the learned Judicial Magistrate No.III, Salem, by placing reliance on the ruling of the Hon'ble Supreme Court in the case of ***Rengappa Vs. Sri Mohan*** reported in ***2010 4 CTC 118*** erroneously shifted the burden on the Accused. The learned Judicial Magistrate No.III, Salem, failed to consider that the initial burden under Section 118 of the Negotiable Instruments Act, 1881 is on the Complainant. Only then, the burden shift on the Accused. It is a clear case of the Accused that she is residing in a tin shed measuring 10 × 10



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feet and it is a temple property. It is her defence that she did not need such a huge amount as loan at any time. She also deposed that her husband and the Complainant are friends from School days. Her husband approached the Complainant to arrange a loan for him for the business of polishing silver. It is in this context, a cheque signed by the Accused was given for loan purpose but it was misused by the Complainant to institute the present complaint.

9. When the Complainant was cross-examined regarding his wherewithal, he had stated that he withdrew the amount from his Bank account and paid it to the Accused. However, the Complainant did not file his statement of account evidencing the withdrawal of the amount. Therefore, in order to rebut the initial presumption raised by the Complainant, the Accused summoned the Manager of the Bank in which the Complainant is maintaining his accounts. Mr. Murugan, Manager of Indian Bank, was examined as D.W-1. In his evidence, D.W-1 had clearly stated that the Bank account had transactions for Rs.1,000/- only. He also stated that there was no transaction in the Bank account of the Complainant during the relevant period. He also deposed that a huge amount came to the account of the Complainant through the disputed cheque but it was returned for “insufficient funds”. Thus, it is glaringly evident that the Complainant has no wherewithal to lend such a huge



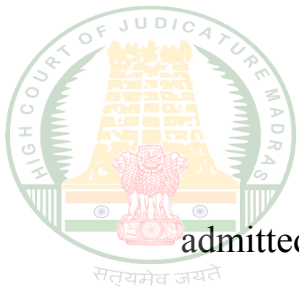
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sum of Rs.9,34,000/- to the Accused in this case.

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10. It is seen from the records that the Complainant was doing brokerage, dealing with provisional store and earns a sum of Rs.15,000/- to Rs.20,000/- per month. He is not an assessee under the provisions of The Income Tax Act. In his evidence, the Complainant, as P.W-1 deposed that he was having a sum of Rs.4,84,000/- during the relevant period when the Accused sought for financial assistance. However, the Complainant did not file the statement of accounts from the Bank. On the other hand, D.W-1 in his deposition had stated that there was no transaction exceeding Rs.1,000/- in the Bank account of the Complainant from 2013 to 2015. In other words, he had categorically stated that between 01.01.2013 and 31.12.2014, there was no transaction in his account. This would amply makes it clear that the contention of the Complainant that he withdrew the amount from his Bank and paid it to the Accused is too big a pill to be swallowed by him.

11. The Accused is admittedly residing in a tin shed measuring 10×10 feet and the land belonged to the temple. The Accused has no means to seek for a loan amount of nearly Rs.10 lakhs. Similarly, the Complainant has no wherewithal to advance Rs.9,34,000/- in cash to the Accused. Even as

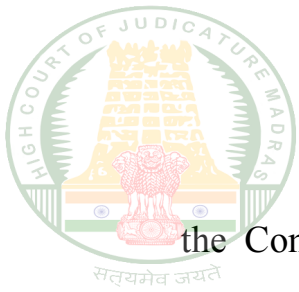


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admitted by the Complainant, he was not an Income Tax assessee. While so, the plea of the Complainant that he had paid Rs.9,34,000/- as loan to the Accused is hard to be accepted. It is also to be mentioned that even at the time of paying Rs.9,34,000/-, admittedly, the Complainant did not accept any promissory note or any other instrument from the Accused. The cheque in question was alleged to have been issued ten months after the so-called loan amount paid by the Complainant.

12. The Complainant claims that he had borrowed money from the Bank as loan and then handed over the amount to the Accused. He also claims that he had obtained loan by mortgaging his property with Salem Central Co-operative Bank for Rs.4,50,000/- for expansion of his business, which amount had been given to the Accused. To substantiate this statement, the Complainant has not produced any document. When it is the case of the Complainant that he availed loan by mortgaging his property and paid it to the Accused, the burden is on him to produce those documents to substantiate the lending of amount to the Accused.

13. As regards the statutory notice issued by the Complainant, the Accused had stated that immediately on receipt of the notice, she confronted



the Complainant along with her husband, however, it was replied that the Complainant will return the cheque and he will not initiate any proceeding.

However, this statement was denied by the Complainant in his cross-examination.

14. On appreciation of the entire evidence, both oral and documentary, it is clear that the defence of the Accused was probablised in the cross-examination of P.W-1 as well as examination of D.W-1, Manager of the Bank of the Complainant where he maintains his account as defense witness. Further, the statement of account produced by D.W-1 from 01.01.2013 to 31.12.2014 has been marked as Ex.D-1 in which it is found that nowhere huge amount is maintained or transacted in his account. Merely because the Accused had issued a cheque, allegedly towards a legally enforceable debt, it will not be a ground to convict the Accused. The Complainant has to raise a stronger presumption in his favour, which presumption is unassailable by any other contra evidence. In this case, the initial presumption raised by the Complainant had been rebutted by the Accused by examining D.W-1, Manager of the Bank where the Complainant is maintaining his account. When the Complainant is not resourceful enough to pay Rs.9,34,000/- to the Accused, merely because the Accused admitted the signature in the cheque, she need not



be convicted. In this regard, Section 118 of the Negotiable Instruments Act, 1881 is necessary to be referred to and it reads as follows:-

“118. Presumptions as to negotiable instruments.—

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.”

15. Thus, as and when the Complainant raises a stronger presumption in his favour, then the burden of rebutting it will shift on the Accused. The explanation of the Accused that she did not require such huge amount as loan is found probable in the facts and circumstance of the case. The Accused is an illiterate and she ekes out her livelihood through silver polishing work as an artisan. In such circumstances, there may not be any need for the Accused to avail huge amount of Rs.9,34,000/- as loan from the Complainant and such a defence raised by her is more probable. It is for the Complainant to establish the initial burden to prove that the cheque came into existence for the discharge of a legally enforceable debt or liability. When he had alleged to have extended the loan, he had to prove the same in accordance with Section 118 (g) of the Negotiable Instruments Act, 1881. Under those circumstances, the grounds of Revision raised by the learned Counsel for the Revision



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Petitioner are found justified. It is not necessary that the Accused shall enter the witness box and rebut the evidence. It is enough that the Accused is able to probablise the defence by preponderance of probabilities through the cross-examination of the Complainant as P.W-1 and the evidence of the Manager of the Indian Bank where the Complainant operates its account. The learned Judicial Magistrate was carried away by the principle that the Accused has to prove that she has not borrowed any amount. On the other hand, the Complainant has to first prove that he had the wherewithal and was resourceful enough to pay the loan amount. The initial burden is on the Complainant under Section 118 of the Negotiable Instruments Act, 1881 and then the burden shifts to the Accused, which was lost sight of. The Courts below were carried away by the plea that the Accused did not issue any reply to the notice at the earliest point of time and therefore, the defence of the Accused cannot be accepted.

16. The learned Counsel for the Respondent/Complainant submitted that when there is concurrent finding of fact, the Revisional Court cannot reassess evidence as that of the Appellate Court. Therefore, this Revision has no merits and is to be dismissed. The said submission of the learned Counsel for the Respondent/Complainant cannot be accepted since the Revisional power is



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exercised by the High Court when there is failure of justice. It is true that the Accused had not sent any reply to the statutory notice. When the Accused was examined by the Court under Section 313 (1) (b) of Cr.P.C regarding incriminating materials, she had stated that the Complainant is a long time friend of the husband of the Accused and on receipt of the statutory notice, she sought for return of cheque and questioned him. However, the Complainant stated that he will not file any case and return the cheque. Even though this statement of the Accused was denied by the Complainant, still, it can be considered that the reason for non-issuance of reply is on the basis of the assurance of the Complainant to return the cheque. Therefore, it is not acceptable that concurrent findings of the Courts below are always right and it need not be interfered with by this Court.

17. As per the reported ruling of the Honourable Supreme Court in the case of *Rangappa v. Sri Mohan* reported in (2010) 11 SCC 441, the Accused to discharge the burden of rebuttal evidence need not enter the witness box. The Accused can raise the defence through the materials available with the Prosecution by preponderance of probabilities. It is the defence of the Accused that the Complainant did not have the wherewithal to extend such huge amount as loan. Also, the Accused did not have the necessity for such



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huge amount of loan. Under those circumstances, the Accused had probablised her defence by preponderance of probabilities from the evidence of P.W-1 in cross-examination and the evidence of the Manager, Indian Bank, Shevapet Branch where the Complainant maintains his account. The learned Judicial Magistrate-III, Salem as well as the learned II Additional District and Sessions Judge, Salem, failed to consider those materials available in the cross examination of P.W-1 along with evidence of Bank Manager and the document marked as Ex.D-1. Therefore, the Judgment of the learned Judicial Magistrate-III, Salem and the Judgment of the learned II Additional District and Sessions Judge, Salem are found perverse.

18. The reported ruling cited by the learned Counsel for the Revision Petitioner also supports the case of the Accused that initial burden is on the Complainant to prove his case. Merely because the Accused did not give reply notice, the Court cannot draw adverse inference against the Accused. The facts of the reported ruling cited by the Revision Petitioner in the case of ***K.Subramani Vs. K. Damodara Naidu*** reported in ***2015 (1) SCC 99*** is more or less similar to the facts of this case herein.

19. In the light of the above discussion and the reported rulings cited by the learned Counsel for the Revision Petitioner, the point for consideration



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is answered in favour of the Revision Petitioner/Accused and against the Complainant. The Judgment dated 21.02.2019 passed in C.A.No.71 of 2017 by the learned II Additional District and Sessions Judge, Salem, confirming the Judgment dated 31.05.2017 passed in STC.No. 4 of 2016 by the learned Judicial Magistrate No.III, Salem is perverse which warrants interference by this Court.

In the result, this ***Criminal Revision is allowed.*** The Judgment dated 21.02.2019 passed in C.A.No.71 of 2017 by the learned II Additional District and Sessions Judge, Salem, confirming the Judgment of conviction and sentence passed by the learned Judicial Magistrate No. III, Salem, in STC. No.4 of 2016, dated 31.05.2017 are set aside.

26.03.2025

dh/shl

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate-III, Salem.
2. The II Additional District and Sessions Judge, Salem.
3. The Section Officer,
Criminal Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J

dh

Order made in
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