

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2021

PRONOUNCED ON : 08.07.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.986 of 2019
and Crl.M.P.No.13856 of 2019

P.Ponnambalam ..Revision Petitioner/Appellant/Accused

Vs

R.Ramani ..Respondent/Respondent/Complainant

PRAYER : Criminal Revision Petition filed u/s.397 and 401 of Cr.P.C.,
praying to set aside the order of conviction and sentence passed in judgment
dated 16.08.2019 in C.A.No.615/2018 by the XVI Additional District and
Sessions Judge, Chennai, who confirmed the order of learned Judge, Fast
Track Court IV, Metropolitan Magistrate, George Town, Chennai-1 in
C.C.No.1599/2014.

For Petitioner : Mr.V.T.Narendiran

For respondent : Mr.N.Elayaraja

ORDER

The respondent is the complainant. The petitioner is the accused before Metropolitan Magistrate, FTC IV, George Town, Chennai-1 in C.C.No.1599 of 2014.

2. The respondent filed the complaint against the petitioner herein under Section 138 of Negotiable Instruments Act before the Metropolitan Magistrate, FTC, Chennai. The Magistrate taken cognizance of the complaint in C.C.No.1599 of 2014. During the enquiry, the respondent/complainant was examined as witness as P.W.1 and marked Ex.P.1 to Ex.P.11. After completing the evidence of the complainant side, on the side of the accused, two witnesses were examined and 29 documents were marked. After completing enquiry, the Magistrate found that the accused is guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 10 months simple imprisonment and to pay compensation of Rs.18,00,000/-. Challenging the said judgment of conviction and sentence, accused filed an appeal before the City Civil Court, Chennai, and the same was taken on file in CrI.A.No.615 of 2018 and made over to the XVI Additional District and Sessions Court, Chennai. The learned XVI Additional District and Sessions Court, after hearing arguments on either side, passed the judgment confirming the conviction and dismissed the appeal filed by the Revision

Petitioner/accused. Challenging the said judgment of dismissal of the appeal in CrI.A.No.615 of 2018, on the file of the XVI Additional District and Sessions Judge, Chennai, the accused has filed the present Revision before this Court.

3. The case of the respondent/complainant is that the petitioner and the respondent are very close family friends for the past 30 years. The petitioner borrowed a sum of Rs.14 lakhs from the respondent on various dates from 2009 onwards for the business and family commitments as hand loan. The petitioner used to give an undertaking through a letter pad by acknowledging the debt i.e., a letter showing the dates as and when he borrowed money from the respondent. On account of the close friendship, he used to accept without any documents. Since the petitioner acknowledged the entire money borrowed from the respondent and he did not repay it, the respondent issued a notice on 17.01.2014 to the petitioner to settle the said amount. For which, the petitioner sent evasive reply dated 24.01.2014 and subsequently, the petitioner approached the respondent by saying that on ill advice from some persons, he sent evasive reply. He promised to repay money and he issued a cheque No.000040 dated 11.02.2014 drawn on City Union Bank, Maraimalai Nagar Branch, for a sum of Rs.14,00,000/- in favour of the respondent along

with covering letter dated 13.02.2014. The said cheque was presented for collection through his banker Indian Bank, High Court Branch, Madras, Chennai on 11.02.2014. The said cheque was returned with an endorsement “exceeds arrangement” by return memo dated 13.02.2014. The same was informed to the petitioner by way of statutory notice dated 21.02.2014 to the petitioner calling upon him to repay the cheque amount within the statutory period. Despite the said notice, the revision petitioner did not repay the money. Neither he repaid the cheque amount, nor sent any reply. Therefore, the respondent filed private complaint under Section 200 Cr.P.C. against the petitioner for the offence under Section 138 of Negotiable Instruments Act. After the enquiry, the Magistrate allowed the complaint filed by the respondent and convicted the petitioner. Challenging the same, the petitioner filed appeal before the Principal Judge, City Civil Court, Chennai, and the same was dismissed of by XVI Additional District and Sessions Judge, City Civil Court, Chennai, by confirming the judgment of the Magistrate.

4. The learned counsel for the petitioner would submit that petitioner never borrowed money and never issued any cheque to the respondent. The respondent has no means to lend such a huge money. Further the petitioner has got every means and he is doing business and an Income Tax Assessee

and he has got more than sufficient funds in his bank account during the relevant periods. The son-in-law of the respondent was working with the petitioner. At that time, the day to day affairs was entrusted to him. During that period, he has stolen the signed blank cheques and blank letter head pads. He is making use of that cheque leaf and letter heads and the respondent filled up the letter heads and also signed it. The respondent has not proved his case beyond reasonable doubts. The petitioner rebutted the presumption by preponderance of probabilities that the respondent is not an income tax assessee and he has not proved that he had sufficient means to lend such a huge money to the petitioner. Further, the son of the petitioner earlier filed private complaint alleging that the petitioner issued cheque to him subsequently he withdrawn that complaint. Both learned Magistrate as well as XVI Additional District Sessions Judge, failed to appreciate the evidence let in by the petitioner as defence witness and the documents produced by the petitioner as defence documents and wrongly convicted the petitioner which warrants interference of this court.

5. The learned counsel for the respondent would submit that the petitioner is the family friend of the respondent prior to 2019. The petitioner borrowed upto Rs.14 lakhs on various dates and had acknowledged by letter

head as and when he received amounts and the respondent used to get acknowledgement. When the respondent asked to repay the money, petitioner has not repaid it. Therefore, the respondent issued notice to the petitioner on 17.01.2014. The petitioner sent an evasive reply dated 24.01.2014. Subsequently petitioner approached the respondent and tendered his apology and also gave undertaking to settle the amount mentioned in the notice and also he issued a cheque to the respondent for a sum of Rs.14,00,000/- and the said cheque was presented by the respondent in his Bank viz., Indian Bank, High court Branch on 11.02.2014 but the same was returned for the reason "exceeds arrangement". The respondent issued statutory notice to the petitioner. After he received the notice, he has not repaid the money. He has not cared to send any reply. Therefore, the respondent left with no other option, filed complaint against the petitioner before the Metropolitan Magistrate, for dishonouring the cheque. Both the courts below rightly appreciated the entire evidence. The petitioner admitted the execution and he only denied the means of the respondent to lend money. He stated that the son in law of the respondent stolen the cheque, took letter heads and made use of the same and filed false case. He is man of means during the relevant point of time, he had enough money in his Bank Account and there is no necessity to

borrow the amount. Both the courts below appreciated and found that the petitioner is guilty for the offence under Section 138 of N.I. Act.

6. A perusal of the records would go to show that the execution of the cheque is admitted and Ex.P.3 acknowledgement of debt also proved. Once it is established that the cheque was issued to discharge legally enforceable debt and subsequently, the cheque was presented for collection, the same was returned as unpaid. Therefore, statutory notice was also issued. The same was acknowledged by the petitioner. Subsequently, petitioner neither repaid money nor sent any reply. Therefore, both the courts below found that the respondent/complainant proved the claim, but the petitioner has not rebutted the presumption in the manner known to law.

7. A reading of the entire materials and also judgments of courts below would go to prove that there was acceptance of acknowledgement by the petitioner. The same was also proved by the respondent. The execution of cheque was also proved. The petitioner has taken three main defence that the respondent is not a man of means to lend such a huge money. However, the petitioner has admitted the acknowledgment - Ex.P.3 and signature found in the disputed cheque. Further, the respondent also proved that at that relevant

point of time, he had money in his account. Therefore, the respondent proved the execution of the cheque. Further, the main defence taken by the petitioner is that the cheque was stolen by one Alwin Raj and given to the respondent/complainant for filing the complaint and the respondent has no means to pay the said money. Petitioner has also admitted that he has not given any complaint against the said Alwin Raj regarding cheque leaf stolen by him.

8. The petitioner has stated that he has sufficient means and he is the man of means and no need to borrow the said amount and he issued the cheque for which he has shown the statement of accounts in the Bank. But, he has not proved that everything is shown in the accounts. However, the above reasons may not be the sole ground to state that he has not borrowed the money.

9. The petitioner accepted the signature in the cheque and he has taken defence that cheque was stolen by Alwin Raj. However, after giving complaint by the respondent and when statutory notice was sent, the petitioner has not sent any reply stating the fact that the said cheque was not issued to

respondent, but the same was stolen by Alwin Raj and complaint was given against Alwin Raj. Admittedly, criminal complaint was not given against Alwin Raj for alleged stealing of cheque and letter head pads. Therefore, the defence taken by the petitioner cannot be accepted. Once the petitioner accepted the acknowledgment of debt Ex.P.3 and signature found in the disputed cheque, under Section 139 of N.I. Act, there is a statutory presumption that cheque was issued to discharge legally enforceable debt or liability. No doubt the said statutory presumption is rebuttable one and the accused can always rebut the presumption in the manner known to law. But in this case, the said statutory presumption was not rebutted by the petitioner in the manner known to law. Further both the courts below elaborately discussed about the materials placed by both the petitioner and the respondent. The learned Additional District and Sessions Court is the Appellate Court and is a fact finding court and has reappreciated the entire evidence and given a finding that the respondent has proved his case. The petitioner has not rebutted the statutory presumption in the manner known to law.

10. It is well settled proposition of law that the revision court cannot revisit or re-appreciate the entire evidence and this Court finds that there is no perversity or illegality in the appreciation of evidence. On a perusal of entire

materials and judgment of both the courts below, it is seen that both the courts below rightly appreciated the evidence, material placed before it and rendered the decision and this court does not find any perversity in the appreciation of evidence by the Courts below and there is no merit in the criminal revision.

This court does not find any perversity, illegality or infirmity in the judgments of both the courts below and therefore, the Criminal Revision Case is dismissed. Suspension of sentence already granted by this Court dated 26.09.2019 in Crl.M.P.Nos.13856 of 2019 stands cancelled. The trial court is directed to secure the Revision Petitioner for sufferance of the sentence.

08.07.2021

Index : Yes/No
Internet : Yes/No

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To

- 1.The XVI Additional District and Sessions Judge, Chennai,
- 2.The Judge, Fast Track Court IV, Metropolitan Magistrate, George Town, Chennai-1
- 3.The Section Officer, Criminal Section, High Court, Madras.

Criminal Revision Case No.986 of 2019

P. VELMURUGAN, J.

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