(2015) 02 MAD CK 0172

In the Madras High Court

Case No : Criminal Revision Case (MD) No. 429 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

P. Pandiyarajan APPELLANT

Vs

Parkunan RESPONDENT

Date of Decision : 09-02-2015

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 200, 315, 397, 401
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2015) 02 MAD CK 0172

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : N.R. Murugesan, for the Appellant; S. Karthick, Advocates for the Respondent

Judgement

M. Sathyanarayanan, J.—The revision petitioner is the accused in S.T.C.No. 9 of 2013 on the file of the Court of Judicial Magistrate, Manapparai. The said complaint was filed by the respondent herein under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 as amended by Act 68 of 1988 and 55 of 2002 read with Section 200 Cr.P.C.

2. According to the respondent/complainant, the revision petitioner/accused has borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) on 04.02.2012 to meet out his urgent family circumstances and for consideration of the same, executed a promissory note together with interest at the rate of 3% per month to pay the loan within a period of six months either on demand or to his order.

3. Since the amount was not paid in spite of demand, the respondent/complainant insisted for repayment and therefore, towards partial discharge of the legally enforceable debt, the revision petitioner/accused has issued a cheque bearing No. 549052, dated 07.12.2012 for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) drawn on State Bank of India, Cantonment Branch, Trichy. The said cheque was presented by the respondent/complainant to his banker namely,

Indian Overseas Bank, Manapparai Branch, on 12.12.2012 and it was returned with an endorsement "Funds Insufficient". Thereafter, the respondent/ complainant sent a statutory notice on 22.12.2012 and according to the revision petitioner, though it was received by him, he had neither sent a reply nor paid the amount and therefore, came forward to file the aforesaid private complaint.

4. During the course of trial, the private complainant examined himself as P.W.1 and marked Exs.P.1 to P.8. On behalf of the accused, D.W.1 - one Kumar Deepakraj was examined and Ex.D. 1 - Income Tax particulars of the complainant were marked.

5. The trial Court, on consideration of the oral and documentary evidence, found that the revision petitioner/accused was guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) with default sentence to undergo simple imprisonment for two months, vide order dated 04.03.2014.

6. The revision petitioner/accused, aggrieved by the conviction recorded by the trial Court, filed an appeal in C.A.No. 28 of 2014 along with Cr.M.P.No. 1004 of 2014 for reception of additional evidence.

7. The lower appellate Court found that the petition for reception of additional evidence, is liable to be rejected and chose to concur with the findings recorded by the trial Court and confirmed the conviction and sentence, vide judgment dated 27.06.2014 and challenging the same, the revision petitioner/accused has filed the present Criminal Revision Case.

8. The learned Counsel for the revision petitioner/accused would vehemently contend that the revision petitioner/accused did not know the respondent/ complainant at all and in fact, the cheque given to one Thiyagarajan has been misused and it has been filled up as if it was drawn in favour of the respondent/ complainant and to substantiate his claim, he filed a petition for reception of additional evidence before the lower appellate Court and without properly appreciating the contents of the same, it was erroneously rejected. He would further submit that in the event of this revision being allowed and remanded to the trial Court, he would be able to probabilise his defence that he has nothing to do with the issuance of the cheque in question in favour of the respondent/ complainant.

9. The learned Counsel for the revision petitioner/accused has also drawn the attention of this Court to the findings recorded by the trial Court as well as the lower appellate Court and the testimony of P.W.1/complainant.

10. Per contra, the learned Counsel for the respondent/complainant would contend that the trial Court on a proper consideration and appreciation of oral and documentary evidence, has correctly convicted the revision petitioner/ accused and imposed adequate sentence and the lower appellate Court, on

careful scanning of the materials placed before it, chose to concur with the findings of the trial Court and since the scope of revisional power of this Court under Section 397 read with Section 401 Cr.P.C., is limited, he prays for the dismissal of this revision.

11. This Court has carefully considered the rival submissions and perused the materials available on record.

12. It is an admitted fact that after the cheque in question got dishonoured, a statutory notice was sent by the respondent/complainant, for which, the revision petitioner/accused did not send any reply.

13. It is the stand of the revision petitioner/accused that he has not issued the cheque in question in favour of the respondent/complainant, but issued the same in favour of one Thiyagarajan and it has been found in the hands of the respondent/complainant and how the said cheque has reached the hands of the respondent/complainant remains as a mystery and it has been misused for the purpose of launching the present prosecution.

14. It is further stand of the revision petitioner/accused that the respondent/ complainant is not having any means to advance such a loan amount and in fact, the advancement of loan of Rs. 5,00,000/- (Rupees Five Lakhs only) has not been reflected in the Income Tax particulars, marked as Ex.D.1.

15. It is pertinent to point out at this juncture that in the event of any concealment of income, it is for the appropriate Department to take action and simply because, the advancement of loan in favour of the revision petitioner/ accused did not reflect in the Income Tax Returns, it does not mean that no such amount was advanced to the revision petitioner/accused.

16. It is open to the revision petitioner/accused to examine himself as competent witness in terms of Section 315 Cr.P.C., but he has not chosen to examine himself and though it was the stand that the cheque in question was issued in favour of one Thiyagarajan, nothing precluded him from examining the said person as a witness. In fact, the revision petitioner/accused also preferred a petition to receive the additional documents before the lower appellate Court and it was also rejected and the lower appellate Court found that the respondent/ complainant had satisfied the ingredients of Section 138 of the Negotiable Instruments Act.

17. It is well settled position of law that a case under Section 138 of the Negotiable Instruments Act, is to be decided on preponderance of probabilities and in the considered opinion of this Court, the defence projected by the revision petitioner/accused, in the present facts and circumstances of the case, would not appear to be probable. Both the Courts below recorded the concurrent findings that the revision petitioner/accused has committed the offence under Section 138 of the Negotiable Instruments Act and in the absence of any infirmity or perversity in the findings recorded by the Courts below, this Court, in exercise of

it''s revisional power, cannot interfere with the same.

18. In the result, this Criminal Revision Case is dismissed, confirming the conviction recorded by trial Court, as confirmed by the lower appellate Court. However, taking into consideration the fact that the revision petitioner/accused is employed as a Conductor in the services of the Tamil Nadu State Transport Corporation, is inclined to reduce the sentence from one year rigorous imprisonment to three months rigorous imprisonment. Accordingly, the sentence of imprisonment of one year rigorous imprisonment is reduced to three months rigorous imprisonment and the sentence of imposition of fine with default sentence is maintained. Consequently, the connected miscellaneous petitions are Dismissed.

