
(2015) 04 MAD CK 0377

In the Madras High Court

Case No : Criminal Revision Case No. 221 of 2008

T.N. Udhaya Kumar

APPELLANT

Vs

S. Selvaraj

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2015) 04 MAD CK 0377

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K. Thilageswaran, for the Appellant

Final Decision : Partly Allowed

Judgement

B. Rajendran, J—By the judgment dated 30.05.2007 in S.T.C. No. 326 of 2006 passed by the trial court, the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo rigorous imprisonment for a period of one year and also ordered to pay the cheque amount of Rs. 75,000/-. Aggrieved by the same, the petitioner filed Crl.A. No. 246 of 2007 and the same was dismissed by the learned Additional District and Sessions Judge, Fast Track Court No. IV, Coimbatore on 03.01.2008, against which the present Criminal Revision Case is filed.

2. According to the complainant/respondent herein, the petitioner/accused borrowed a sum of Rs. 75,000/- and issued a cheque towards repayment of the same; but on presentation of the cheque, it was dishonoured on the same day. The complainant/respondent therefore issued a statutory notice dated 26.09.2005 calling upon the petitioner/accused to repay the cheque amount, but there was no response. Hence, the complaint under Section 138 of the Negotiable Instruments Act was filed.

3. The learned counsel for the petitioner/accused mainly contended that the trial court has not considered the fact that the initial presumption is over, the moment

the petitioner says that the wife of the petitioner-DW2 had a transaction with DW5 building contractor. There was an agreement entered into between the wife and the building contractor and towards the payment due, he has issued the cheques. It is his further case that even though the amount due has been paid to the building contractor, the cheques issued for repayment of the liability were not returned and the same was utilized by the respondent/complainant and the case has been filed. However, the Courts below did not consider this vital factor. Accordingly, he would pray for setting aside the judgments of both the Courts below.

4. However, the learned counsel for the petitioner/accused would submit that if this Court comes to a conclusion that the orders passed by the Courts below warrants no interference, then, he pray for reduction of the sentence imposed on the petitioner/accused.

5. Learned counsel for the respondent/complainant would only contend that DW5, the building contractor has categorically denied even the agreement pages contained therein especially from page Nos. 2 and had stated that except page No. 1 in the agreement all other pages are in different ink and they have been fabricated. Therefore, the question of presumption under Section 139 of the Negotiable Instruments Act would not arise. Further he would contend that insofar as the issuance of cheque is concerned, the petitioner/accused as DW4 in the cross examination has admitted himself the receipt of loan and for the repayment of the same, he has issued the cheque. In any event, the petitioner/accused had admitted the past transaction between him and the respondent/complainant, issuance of the cheque and the past liability thereof and therefore both the Courts below have come to the correct conclusion, warranting no interference in this Criminal Revision Case.

6. Heard both sides and with the consent of either side, the criminal revision case is taken up for disposal.

7. On a careful consideration of the arguments advanced on either side as well as the evidence adduced, when the cross examination of PW1 has been taken into consideration, a specific question has been put by the petitioner/accused himself regarding the date of payment, whereby the respondent/complainant not only gives the date but also payment of the money. Therefore, the cheque was issued for the debt due by the petitioner. When there is a clear admission regarding the transaction, receipt of money and issuance of the cheque, the contention put forward now by the petitioner stating that there was an earlier transaction between the wife of the petitioner and D5-building contractor and that he has misused or abused the cheque issued, cannot be accepted at this distant point of time.

8. Even in the judgment of the Hon"ble Apex Court reported in Krishna Janardhan Bhat Vs. Dattatraya G. Hegde, AIR 2008 SC 1325 : (2008) CLT 337 : (2008) 141 CompCas 665 : (2008) CriLJ 1172 : (2008) 1 CTC 433 : (2008) 1 JT

485 : (2008) 1 SCALE 421 : (2008) 4 SCC 54 : (2008) AIRSCW 738 : (2008) 1 Supreme 306 the Apex Court has clearly held that Section 139 of the Negotiable Instruments Act, 1881 merely raises a presumption in favour of the holder of the cheque for the reason that the said cheque has been issued for discharge of any debt or other liability. However, existence of legally recoverable debt, is not a matter of presumption under Section 139. Here, in this case, the legally recoverable debt also has been proved.

9. For all the above reasons, I do not find any reason to interfere with the reasoned order passed by the Courts below in convicting the petitioner/accused under Section 138 of the Negotiable Instruments Act.

10. At this stage, the learned counsel for the petitioner/accused prayed this Court to show leniency in the matter of awarding sentence by setting aside the period of sentence imposed by the Courts below into one of payment of compensation.

11. Taking into consideration the fact that the petitioner is willing to pay back the cheque amount, the sentence of rigorous imprisonment imposed for one year is modified to one of compensation payable to the tune of Rs. 1,00,000/- [Rupees one lakh only].

12. Accordingly, the conviction ordered by both the Courts below is confirmed and the sentence awarded to undergo rigorous imprisonment for a period of one year is modified. However, the petitioner/accused is directed to pay a sum of Rs. 1,00,000/- [Rupees one lakh only] towards compensation to the respondent/complainant. Such compensation shall be paid by the petitioner/accused, within a period of three months" from the date of receipt of a copy of this order and if such amount is paid in time, it shall be disbursed to the respondent/complainant. In the event of failure to pay the amount of Rs. 1,00,000/- [Rupees one lakh only] within the time stipulated by this Court, the petitioner/accused has to undergo rigorous imprisonment for a period of one year as ordered by the trial court and confirmed by the first appellate court. In such event, the trial court shall take appropriate steps as are necessary to secure the presence of the petitioner/accused to undergo the sentence of one year rigorous imprisonment imposed by the Courts below.

13. With the aforesaid direction, this Criminal Revision Case is partly allowed.