

(2011) 09 MAD CK 0133

Madras High Court

Case No: Criminal Rc. No. 1380 of 2007

A. Krishnan APPELLANT

Vs

S. Marimuthu RESPONDENT

Date of Decision: Sept. 22, 2011

Acts Referred:

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

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: P. Jagadeesan, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice C.T. Selvam

1. This revision arises against two concurrent judgments of the courts below, wherein the petitioner stands convicted for offence u/s 138 of Negotiable Instrument Act.

2. The petitioner faced prosecution in C.C.No.254 of 2005 on the file of the Judicial Magistrate Court No. III, Salem. The prosecution case was that the petitioner had borrowed a sum of Rs.1,50,000/-from the respondent for his family expenses as well as for business purpose on 23.02.2005 and issued a cheque dated 23.03.2005 in such sum in favour of the respondent. Upon presentation of the cheque, it was returned on the ground of insufficient funds and therefore, the respondent followed the procedure u/s 138 of Negotiable Instrument Act and preferred a complaint.

3. Before the trial court, the respondent examined himself as a witness and marked five exhibits. None were examined on behalf of the defence and no exhibits were marked. On appreciation of the evidence, the trial Court had convicted the petitioner and passed sentence of six months rigorous imprisonment and also, directed him to

pay compensation to the respondent in the cheque amount. The petitioner had preferred an appeal in C.A.No.148 of 2006 which was dismissed under judgment of the learned I Additional Sessions Judge dated 17.08.2007. There against, this revision.

4. Heard.

5. Learned counsel for the petitioner submitted that the petitioner had no dealings with the respondent and that the petitioner had dealt with one Singaram and in the course of chit transactions, he issued two signed blank cheques in favour of Singaram. The said Singaram has set up this respondent and preferred a false complaint. In support of such contention, learned counsel for the petitioner pointed out that during cross examination of the respondent, it had been elicited that he was a labourer in a Banian Company and that the petitioner is a person running two cycle stands and a wine shop and financially was sound and that the petitioner had no occasion for taking a loan from him. Further, he knew the said Singaram, which person was engaged in money lending at exorbitant rates. The respondent had deposed that the loan was handed over by him to the petitioner at the petitioner's cycle stand when no witness was there. According to the respondent, the cheque had been duly filled up and handed over to him. Learned counsel for the petitioner would submit that on bare perusal of the cheque/Ex.P1 in question, it would be apparent that the writings and the signature thereupon were different.

6. Learned counsel for the respondent submitted that the petitioner had not caused any reply to the statutory notice and the judgments of the courts below do not call for any interference.

7. Considering the rival submissions, this Court is of the view that though the petitioner had not caused reply to the statutory notice or entered the witness box, he has succeeded in discharging the burden cast upon him u/s 139 of the Negotiable Instrument Act by preponderance of probabilities. In an admitted case, where there had been no prior transaction between the petitioner and the respondent who was a labourer and the respondent admits that the said Singaram, known to him, was engaged in collecting exorbitant interest, this Court would hold that where the respondent himself admits to the petitioner being a person in sound financial health, it would be proper to infer that the petitioner has discharged the burden cast upon him u/s 139 of the Negotiable Instrument Act by preponderance of probabilities. When such is the case, we find no proof of or any effort by the respondent to prove the debt. Where the onus stands shifted and the complainant fails to prove the debt, the complaint must fail.

In the result, the revision succeeds and the judgment of the courts below are set aside. Fine, if any paid, shall be refunded to the petitioner.