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Crl.A(MD)No.907 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29/08/2024

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl. A(MD)No.907 of 2023

Maruthasalamoorthy : Appellant/Complainant

Vs.

Paramasivam : Respondent/Sole Accused

Prayer: This Criminal Appeal is filed under Section 378(4) of the Criminal Procedure Code, to set aside the order passed by the District Munsif-cum-Judicial Magistrate, Orathanadu in STC No.313 of 2015, dated 08/01/2019.

For Appellant : Mr.K.Mahedran

For respondent : Mr.M.Subash Babu
Senior Counsel
for M/s.Subash Law Office

J U D G M E N T

This Criminal Appeal is filed against the acquittal judgment passed by the District Munsif-cum-Judicial Magistrate, Orathanadu, in STC No.313 of 2015, dated 08/01/2019.



2. The facts in brief:-

The complainant, who is the appellant herein filed a private complaint against the respondent herein for an offence under section 138 of the Negotiable Instruments Act with the following averments:-

(i) Both are close friends. In view of the above said friendship, the respondent herein requested loan amount of Rs.14,00,000/- for meeting out his personal expenses and for constructing the house. He also stated that he applied for Bank loan, but it getting delayed. He promised that after receiving the loan amount from the Bank, he will return the money. So, he paid Rs.13,50,000/- to the respondent on 22/03/2015. But no document was executed on account of their friendship.

(ii) On 01/06/2015, when he demanded money back, the respondent promised to return the money within 5 days. On 05/06/2015, he issued a cheque bearing No.063919 drawn on State Bank of India, Thiruvonam Branch, for Rs.13,50,000/-. It was presented for payment through the complainant Banker. On 12/06/2015, the cheque was returned dishonoured stating that it exceeds arrangement. When that was informed to the respondent, he did not give any proper reply. Having known that the cheque limit is only Rs.5,00,000/-, the respondent has drawn the cheque for Rs.13,50,000/- to cheat



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the complainant. After completing the statutory formalities, he filed the private complaint under Section 138 of Negotiable Instruments Act.

3.The trial Court has taken cognizance for the offence under Sections 138 of Negotiable Instruments Act and issued summons and on summons, the respondent appeared before the trial Court. The trial Court questioned the accused by stating the substance of the complaint, he denied the accusation.

4.The appellant had examined PW1 to PW3 and marked Exs.P1 to P7. On the side of the accused, no oral and documentary evidence was adduced.

5.After examination of the witnesses, the accused was examined under Section 313(1) (b) of Cr.P.C., with regard to incriminating circumstances found in the prosecution evidences. The accused denied the evidences.

6.At the conclusion of the trial process, the trial court acquitted the accused disbelieving the complaint.

7.Aggrrieved over the same, the complainant is before this court by way of filing this criminal appeal.



8.Heard both sides.

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9.Since the offence under section 138 of the Negotiable Instruments Act is alleged, it is the duty of the appellant herein to prove the *prima facie* case that the cheque was issued for valid consideration and that was dishonoured and the respondent failed to meet out the demand, in spite of the statutory notice.

10.Now we will see the reason for the acquittal.

11.It was contended on the part of the respondent before the trial court that the signature is a forged one; The disputed cheque was found missing; That was intimated to the Banker on 30/05/2015; No such amount was borrowed from the complainant; For some-time, they were working in the same Branch of a Nationalized bank; Later, there was no nexus between them; The capacity of the complainant to lend such a huge amount was disputed. So, all those contentions, the trial court recorded a finding that no steps were taken by the complainant to prove that the dispute cheque contains the signature of the respondent and the lending of money without any documentary evidence is highly doubtful. The disputed cheque alleged to have been issued on 02/05/2015. But on 03/05/2015, stop payment request was made by the accused/respondent herein. The version of the



complaint is that the cheque was issued on 05/06/2015 is not reliable.

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12.Now challenging the above said finding, this appeal is preferred by the complainant.

13.The learned counsel appearing for the appellant would submit that there is no documentary evidence to show that the dispute cheque was missing or stolen; In fact, the respondent herein has transacted cheques, which contains subsequent numbers; Regarding the missing or stolen of the cheque, no complaint was preferred by the respondent to the police; Both were working in the very same Bank; So, by exercising his position, stop payment request was made; Since subsequent transaction shows that the plea raised by the respondent herein is not true before the trial court.

14.Per contra, the learned counsel appearing for the respondent would submit that the capacity to lend a huge amount is not proved; Cheque was found missing on 30/05/2015; on the very same day, the complaint was sent to the Banker; Even the signature differs in that cheque. It is also submitted that the limit of cheque is actually Rs. 5,00,000/-. There is no possibility for the respondent herein to issue a cheque for Rs.13,50,000/-.



15.In reply to the above said argument, it is contended by the appellant that on 30/05/2015 only, the complaint was given; It is highly improbable that one cheque was found missing; The finding has been wrongly recorded by the trial court that both were working in the very same Bank, at one point of time; the complaint was preferred on 10/06/2015, after receiving the notice issued by the appellant. It is also pointed out some mistakes in the judgment of the trial court.

16.In the light of the above said rival submissions, let us examine the issue.

17.The first ground is with regard to the signature.

18.Since the respondent/accused denied that the disputed cheque does not contain his signature and it is forged by the appellant herein, it is the foremost duty of the appellant herein to prove the signature.

19.Next aspect is that the cheque was issued by him for valid consideration or towards discharging the legal enforceable liability.



20. When we compare the disputed signature with the admitted signature of the respondent in the Bank application form, we find that it does not match. No steps were taken by the appellant herein even to send for the admitted signature of the respondent from the Bank where he was working. When the signature itself does not tally and completely differs, the findings recorded by the trial on that aspect is perfectly valid and there is no misreading of the document.

21. The next aspect is whether it was issued for any valid consideration or towards the discharge of the legally enforceable liability.

22. Here, the capacity of the appellant is also disputed by the respondent. Lending of huge amount without any scrap of proper evidencing the payment of money and received also creates doubt upon the mind of this court also. Such a doubt was entertained by the trial court. To show the capacity to lend the huge amount, absolutely no evidence was let in by the complainant. Even the persons, who were present at the time of lending were not examined. It is simply stated that by mobilizing the money after selling sridhana of the wife and the money earned from the agricultural operation lend the same.



23. Even though, it is stated that they were sources, that does not lead to any inference for such utmost faith reposes upon the respondent by the complainant. The capacity to lend the amount is not also properly established.

24. Regarding the contents of the cheque, this court entertained great doubts.

25. It is a case of the appellant that on 05/06/2015, the respondent came to his house, filled up the cheque and put his signature and handed over, which means that the cheque was duly filled up by the respondent in his hand. But perusal of the disputed cheque does not support that version. We see the marked difference between the drawee name, amount filled up in letter and figure, so also the date. Then, who filled the cheque is not known. So, the contention of the appellant that it was filled up by the respondent and handed over to him is also highly doubtful and not reliable also. So, the second point also fails.

26. With regard to the issue of the cheque for a legally enforceable liability, now we will go to the other aspects of whether the respondent herein can be believed to say that the cheque was missing, so the complaint was given.



27.On the side of the complainant, the Branch Manager was examined as PW2. He has stated in his evidence

that the accused is working as Head Messenger in the Bank.

The disputed cheque was issued to him in a cheque book. On 10/04/2015, Rs.10,00,000/- was sanctioned as housing loan. He en-cashed the same on various dates. On 30/05/2015, he gave the complaint/representation that the cheque bearing No.063919 is found missing. So, that should not be honoured. But the date of missing of the cheque is not mentioned in the complaint. He would further say that whether the cheque No.063928 was en-cashed on 25/04/2015 is not known. By those suggestions, as mentioned above, it is the case of the appellant that subsequent transactions will show that the present complaint cheque was not found missing, but actually, it was issued in favour of the appellant. Now, we can simply disbelieve the version of the accused that it was found missing, even that does not improve the case of the appellant when apparently signature differs.

28.Let us go to the judgment cited by the appellant. He would rely upon the judgment of the High Court of Calcutta in the **Dipak Kumar Shaw Vs. State of West Bengal and another (CRA No.307 of 2017, dated 19/05/2023)**. But that judgment is not helpful to the appellant case.



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29.As mentioned above, the very issue of the cheque in favour of the appellant towards legally enforceable liability is not established. When the foundational facts are not established, on amount of judgment can support the appellant.

30.For all the reasons stated above, the judgment of acquittal passed by the trial court requires no interference.

31.In the result, this Criminal Appeal fails and the same is **dismissed**.

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To,

The District Munsif-cum-Judicial Magistrate,
Orathanadu,
Thanjavur District.



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G. ILANGO VAN, J

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