

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.A.No.833 of 2011

Judgment reserved on: 25.02.2015

Judgment pronounced on: 06.03.2015

S.Mukanchand Bothra ... Appellant/Complainant

Vs.

Shanmuga Selvi ... Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., against the judgment of acquittal dated 08.09.2010 in C.C.No.6789 of 2002 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.S.Mukanchand Bothra
(party-in-person)

For Respondent : Mr.K.Ramani

J U D G M E N T

This Criminal Appeal arises out of the judgment of acquittal dated 08.09.2010 in C.C.No.6789 of 2002 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

2.The appellant herein as a complainant preferred a private complaint stating that the respondent/accused had borrowed loan from the complainant and to discharge the said liability, he had given Ex.P1 cheque dated 18.08.2002 for Rs.60,000/-. When the appellant presented the cheque for encashment on 04.09.2002, it was returned as "insufficient funds" on 05.09.2002 vide Ex.P2 return memo. Even though the appellant issued Ex.P3 statutory notice to the respondent to her correct address under Section 138(b) of the Negotiable Instruments Act (hereinafter called as "the Act"), the same was

returned undelivered on 30.09.2002 with an endorsement "party out of station not claimed" as per Ex.P4. Therefore, the appellant preferred a private complaint against the respondent/accused under Section 138 of the Act.

3.The trial Court has taken cognizance of an offence, after following the procedure and recording sworn statement. Since the accused pleaded not guilty, the trial Court examined P.W.1 and marked Exs.P1 to P4 on the side of the complainant. No oral and documentary evidence were let in on the side of the respondent. The trial Court after considering the oral and documentary evidence, acquitted the accused for the offence under Section 138 of the Act stating that P.W.1/complainant in his cross-examination fairly conceded that he received demand draft from the respondent for a sum of Rs.60,000/- and since the complainant received the entire amount borrowed by the accused, there is no liability on her part.

4.Challenging the judgment of acquittal passed by the trial Court, the party-in-person/appellant/complainant has submitted that merely because he received demand draft for Rs.60,000/- from the accused, she has not filed any application for compounding the offence for payment of that amount and hence, she shall not exonerate from the criminal liability. It is further submitted that statutory notice was sent to the correct address of the accused and that the appellant has invoked presumption under Sections 118 and 139 of the Act that notice has been duly served. But all the above aspects have not been considered by the trial Court and hence, he prayed for conviction of respondent and allowing the appeal.

5.Resisting the same, learned counsel for the respondent/accused submits that the appellant herein has received cheque amount and hence, no liability on the part of the respondent on the date of passing of judgment. It is further submitted that the trial Court after considering oral and documentary evidence, rightly acquitted the respondent/accused. Therefore, he prayed for dismissal of the appeal.

6. Considered the rival submissions made on both sides and perused the materials available on record.

7.The case of the appellant/complainant is that the respondent herein had borrowed Rs.60,000/- from the appellant and issued Ex.P1 cheque dated 18.08.2002. When the cheque was presented for encashment, it was returned as "insufficient funds" vide Ex.P2 return memo. So the appellant had issued Ex.P3 statutory notice to the respondent, but the same was returned undelivered with an endorsement

"party out of station not claimed". Therefore, the appellant preferred a private complaint against the accused under Section 138 of the Act.

8. Now this Court has to decide whether payment of entire cheque amount is abandoned criminal liability under Section 138 of the Act. It is admitted by both sides that during pendency of criminal case before the trial Court, the cheque amount of Rs.60,000/- was paid by the accused by way of demand draft and the same was also accepted by the appellant.

9. It is seen that Ex.P3 statutory notice was sent to the correct address of the respondent/accused. Now it is appropriate to incorporate Section 27 of the General Clauses Act, which reads as follows:

"27. Meaning of service by post. Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. "

As per Section 27 of the General Clauses Act, notice sent to the correct address is deemed to be served, unless contrary is proved.

10. Admittedly, statutory notice was sent to the correct address of the respondent and it was returned undelivered as "party out of station not claimed". In such circumstances, I am of the view, notice is deemed to be served under Section 27 of the General Clauses Act and it is valid under Section 138(b) of the Act.

11. On perusal of the cross-examination of P.W.1/appellant, it reveals that he himself admitted that he has received the entire cheque amount of Rs.60,000/- by way of demand draft.

12. According to the appellant/party-in-person, after filing of complaint and during pendency of the case, even if the cheque amount has been paid by the accused, she shall not exonerate from the criminal liability.

13. As per the dictum of the Apex Court, unless the judgment of acquittal passed by the trial Court is perverse, this Court cannot interfere with the findings of the trial Court. Further, as per the dictum of the Apex Court, if two views are possible, the view favouring the accused must be taken into consideration.

14. Considering the facts and circumstances of the case along with the dictum laid down by the Apex Court, I am of the considered opinion, since the respondent/accused has paid entire cheque amount during pendency of the case before the trial Court, the trial Court on considering the said aspect acquitted the accused. In my view, there is no perversity in the judgment of acquittal passed by the trial Court. Therefore, the judgment of acquittal passed by the trial Court is hereby confirmed.

15. In fine, this Criminal Appeal is dismissed by confirming the judgment of acquittal dated 08.09.2010 in C.C.No.6789 of 2002 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Kj

To

1.VIII Metropolitan Magistrate, George Town, Chennai.

2.-do- Through The Chief Metropolitan Magistrate, Egmore, Chennai - 8.

3.The Record Keeper, Criminal Section,
High Court, Chennai.

+2cc's to M/s.S.Mukunchand Bothra, Advocate, S.R.No.12862

NM(CO)
CA(16/03/2015)

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