

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2017

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THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.498 of 2017

V.Suresh Babu

... Appellant

Vs

M.Sasi

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to set aside the acquittal order dated 29.11.2016 passed in S.T.C.No.50 of 2015 on the file of Judicial Magistrate/Fast Track Court-II Erode, Erode district.

For Appellant : Mr.C.Prakasam

For Respondent : Mr.M.Guruprasad

ORDER

The complainant in S.T.C.No.50 of 2015 is the appellant herein. It is a private complaint filed under Section 138 of the Negotiable Instruments Act. The complaint has been filed on the allegations that the respondent herein on 13.02.2013 borrowed a sum of Rs.2,15,000/- from him and for the discharge of the said liability, he has handed over a cheque (Ex.A.1) dated 13.03.2013 for Rs.2,15,000/-. The cheque was dishonoured when presented for collection

through Union Bank of India, Erode, due to “funds insufficient” in the account of the respondent.

2. The complainant issued legal notice dated 19.03.2013 calling upon the respondent to pay the cheque amount. The respondent received the legal notice on 20.03.2013 and sent a reply on 10.04.2013. The present complaint was filed on 30.04.2013. The complainant examined himself in support of his case.

3. Respondent pleaded not guilty and has taken the plea that he borrowed Rs.30,000/- in the year 2009 and at the time of taking the loan, the complainant received unfilled cheques and that he has repaid the said amount and asked for return of the cheques. However, the complainant gave evasive reply saying that the cheques were missing. He has also stated that during the year 2011, a dispute arose between D.W.1 Dhanapalan and the complainant over sale of Dhanapalan's property, that in this connection he was examined by the police and as he sided with Dhanapalan, the petitioner misused one of the cheques handed over to him in the year 2009 and filed the present complaint. The trial Court has accepted the case of the respondent and it has come to the conclusion that the complainant failed to prove his case beyond reasonable

doubt and acquitted the accused. Aggrieved by the order of acquittal the present appeal has been preferred.

4. The learned counsel appearing for the appellant would contend that the Trial Court was not justified in acquitting the accused. It is also his contention that in the absence of any evidence on the side of the respondent, the Trial Court was not justified in recording a finding that the respondent has rebutted the presumptions drawn against him in terms of Section 139 of Negotiable Instruments Act.

5. The learned counsel appearing for the respondent advanced his arguments in support of the judgment. According to him, there are enough materials to show that the respondent has rebutted the presumptions and there is no evidence to show that the cheque was issued for the discharge of any legally enforceable debt.

6. It is not in dispute that the cheque belongs to the respondent and it bears his signature. Therefore in the light of the decision in Rangappa Vs Srimohan reported in 2010 (3) MLJ (CrI) 547 (S.C) it can be presumed that it was issued for the discharge of legally enforceable debt. However, the

presumptions drawn in terms of Section 138 & 139 are rebuttable. Therefore it is to be seen whether respondent has raised a probable defence in order to conclude that he has rebutted the presumption drawn against him.

7. In support of his case respondent has given evidence as DW2. He has also examined Dhanapalan DW1. Dhanapalan has lodged a complaint against the complainant and a copy of the complaint has been marked as Ex.D1. In order to rebut the presumption it is open to the respondent to place reliance on the evidence adduced by the complainant. PW1, the complainant in his evidence would state that he has paid income tax for the period 2011 to 2013. It is also his evidence that he has filed cases under Section 138 Negotiable Instruments Act against six persons including the respondent herein. He would further admit that he has not shown in his income tax returns the amount he had lent to those persons. It is significant to note the cheque in question is for Rs.2,15,000/- only. The complainant did not charge any interest. It is also his evidence that nobody was present at the time of advancing the loan to the respondent. It is impossible to believe that the complainant lent Rs.2,15,000/- without any agreement for payment of interest. In these circumstances it can be safely concluded that the respondent has rebutted the presumptions drawn against him in terms of 118 & 139 of Negotiable Instruments Act.

8. Once the presumption has been rebutted it is for the complainant to prove that he has actually lent Rs.2,15,000/- to the respondent. In the case at hand except the interested oral testimony of the complainant and the disputed cheque there is no other dependable material to hold that the complainant has lent Rs.2,15,000/-. Therefore there is no difficulty to hold that the complainant has failed to prove his case.

9. It is well settled that unless the Appellate Court finds that the view taken by the Trial Court is unreasonable or perverse, it should not interfere with an order of acquittal. In the case at hand, the view taken by the Trial Court is permissible on the evidence on record. As the Trial Court has taken a reasonably possible view, I hold that the order of acquittal cannot be interfered with. The appeal is liable to be dismissed.

10. In the result, the Criminal Appeal is dismissed.

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N.AUTHINATHAN, J.

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To

1. The Judicial Magistrate/Fast Track Court-II Erode,
Erode district.
2. The Public Prosecutor,
High Court, Madras.



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