

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2017

Pronounced on : 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.1073 & 1075 of 2000

R.Vijayaraghavan ... Appellant in both Crl.As.

Vs

Seegampatti Rajagopal ...Respondent in
Crl.A.1073/2000

R.Banumathy ...Respondent in
Crl.A.1075/2000

Prayer in Crl.A.No.1073 of 2000:- Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed by the XXIII Metropolitan Magistrate, Saidapet dated 16.10.2000 in C.C.No.3860 of 1998.

Prayer in Crl.A.No.1075 of 2000:- Criminal Appeal filed under Section 378 Cr.P.C., against the judgment passed by the XXIII Metropolitan Magistrate, Saidapet dated 16.10.2000 in C.C.No.3862 of 1998.

For Appellant in both Crl.As : Mr.V.Sairam

For Respondent in both Crl.As: Mr.T.Dinesh

Kumar,

Legal Aid

Counsel

COMMON JUDGMENT

The appellant, in both the appeal, is the complainant, who filed a private complaint for an offence under Section 138 of Negotiable Instrument Act, in C.C.No.3860 of 1998 & 3862 of 1998 on the file of the XXIII Metropolitan Magistrate, Saidapet. The respondent in Crl.A.No.1073 of 2000 is the accused in C.C.No.3860 of 1998 and the respondent in Crl.A.No.1075 of 2000 is the accused in C.C.No.3862 of 1998. After trial, by judgment dated 16.10.2000, the trial Court acquitted both the respondents. Against which, the appellant is before this Court with these appeals.

2. The case of the prosecution, in brief, is as follows:-

The respondents in both the appeals have borrowed a sum of Rs.4,00,000/- each from the appellant and in order to repay the debt, they have issued two cheques dated 08.05.1998, for a sum of Rs.4,00,000/- and the above cheques were presented for encashment by the appellant and the cheques were dishonoured on the ground of "insufficient funds". Then, the appellant issued a legal notice, even after receipt of the legal notice, the respondents did not send any reply, and they have also failed to pay the amount. Hence, the appellant filed a complaint. In order to prove his case, the appellant examined 2 witnesses and marked 7 documents.

3. Out of the witnesses examined, P.W.1 is the complainant. According to him, both the respondents have borrowed a sum of Rs.4,00,000/- on 06.02.1997 and in order to discharge the loan, they have issued two cheques and also a pro-note, which was marked as Ex.P.6 and they have also entered into a loan agreement, Ex.P.7. Subsequently, when P.W.1 demanded money, in order to discharge the loan, both the accused issued two cheques dated 08.05.1998. When the above cheques were presented before the Bank of Baroda, K.K.Nagar Branch, the same was returned as "insufficient funds". Thereafter, he has issued legal notice, Ex.P.3 and the respondents also received the same, even after the receipt of the same, they did not send any reply and they have also not paid any amount. Hence, P.W.1 filed a complaint.

4. P.W.2 is the Manager of the Bank of Baroda, K.K.Nagar Branch. According to him, the complainant is having Savings Bank account in their Bank, and he has also spoken about the presentation of cheques and also return of the cheques on the ground of "insufficient funds" and the statement of account is also marked as Ex.P.5.

5. Considering the above material, the trial court framed charge against the accused and the accused denied the same and in order to prove their case, they have marked two documents as Ex.D1 and Ex.D2 and they did not examine any witness on their side. The respondents also filed an application under Section 91 of Cr.P.C., to produce the statement of account from the appellant to prove that they have obtained any loan from the appellant, but despite the order passed by the court, the appellant did not produce the same. Considering all the materials, the trial court acquitted the accused. Now, challenging the above order of acquittal, the appellant filed these appeals.

6. Even though notice was issued to the respondents, there is no representation on behalf of the respondents. Hence, Mr. T. Dineshkumar, Advocate, was appointed as Legal Aid

counsel for the respondent in both cases.

7. The learned counsel for the appellant submits that admittedly, there is a presumption under Sections 118 and 139 of Negotiable Instrument Act that the cheques have been issued for discharging the legally recoverable debt, but the initial burden was not discharged by the accused, without considering the same, the court below acquitted the accused on mere presumption, doubting Ex.P.6-Pronote and Ex.P.7-Loan Agreement, which is not legally sustainable.

8. Per contra, the learned counsel appearing for the respondents would contend that since the respondents failed to produce the statement of account regarding the payment of loan in favour of the respondents, they raised the initial presumption by a probable defence and the burden shifts on the appellant, but, he failed to discharge the same to prove that there is legally enforceable debt. Apart from that, Ex.P.6 pronote and Ex.P.7 loan agreement, also create a doubt regarding the payment of consideration and considering all the same, the Court below acquitted the accused and there is no infirmity in the judgment of the Court below.

9. I have considered the rival submissions and perused the materials available on record.

10. Since the respondents have not disputed the cheques, under Section 118 and 139 of Negotiable Instrument Act, there is a presumption in favour of the appellant/complainant that there exists a legally enforceable debt or liability. But the presumption is a rebuttable presumption and standard of proof for rebutting the presumption is that of preponderance of probabilities, if the accused is able to raise it by a probable defence, creating a doubt about the existence of a legally enforceable debt or liability, then, the burden shifts on the appellant, and the burden is on him to prove that there is a legally enforceable debt or liability.

11. In the instant case, in order to raise the presumption, the respondents came out with an application under Section 91 Cr.P.C seeking a direction to the appellant to produce the statement of account to show that the loan amount has been actually paid to the appellant. But inspite of the order, the appellant did not come forward to produce the same, hence, the Court below drew adverse inference against the appellant/complainant. The conduct of the appellant, creates a doubt about the payment of loan and also the existence of the legally enforceable debt or liability. By that, the respondents have raised the presumption and the burden shifts on the appellant to prove that there was legally enforceable debt. In order to prove the existence of legally enforceable debt, the appellant produced promissory note (Ex.P.6) executed by the respondents and also the loan

agreement (Ex.P.7).

12. The court below elaborately considered both Ex.P.6 and Ex.P.7 and held that in Ex.P.6, pro-note, marked in C.C.No.3860 of 1998, the respondent-husband and his wife had signed and another pro-note marked in C.C.No.3862 of 1998, the respondent-wife alone signed. But Ex.P.1 Cheque, marked in C.C.No.3860 of 1998, it was only issued by the respondent-husband. Even though as per Ex.P.6, pronote, 24% of interest has been charged, but without calculating interest amount from 06.02.1997 to 08.05.1998, the cheque was issued only for the principal amount of Rs.4,00,000/-. Apart from that, the trial court also doubted Ex.P.7 loan agreement, as the number of columns were not filled up by the respondents, considering all the materials, the trial court came to a conclusion that Ex.P.7, is not executed by the respondents, considering all the available materials, the trial court acquitted both the accused.

13. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principles of criminal justice delivery system is that every person accused of committing an offence, shall be presumed to be innocent, unless his guilt is proved before a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is re-affirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. In the instant case, the trial Court, after considering the entire evidence elaborately, has rightly acquitted the accused. I find no perversity in the judgment of the trial Court. In the above said circumstances, I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

14. In the result, the criminal appeals are dismissed and the acquittal order passed by the trial Court are confirmed.

15. While parting with the judgment, I appreciate the services rendered by Mr.T.Dineshkumar, learned counsel who appeared on behalf of the respondent, in both the appeals, as legal aid counsel. The Tamil Nadu Legal Services Authority, High Court Buildings, Chennai, is directed to pay his necessary remuneration.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.XXIII Metropolitan Magistrate Court,
Saidapet,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

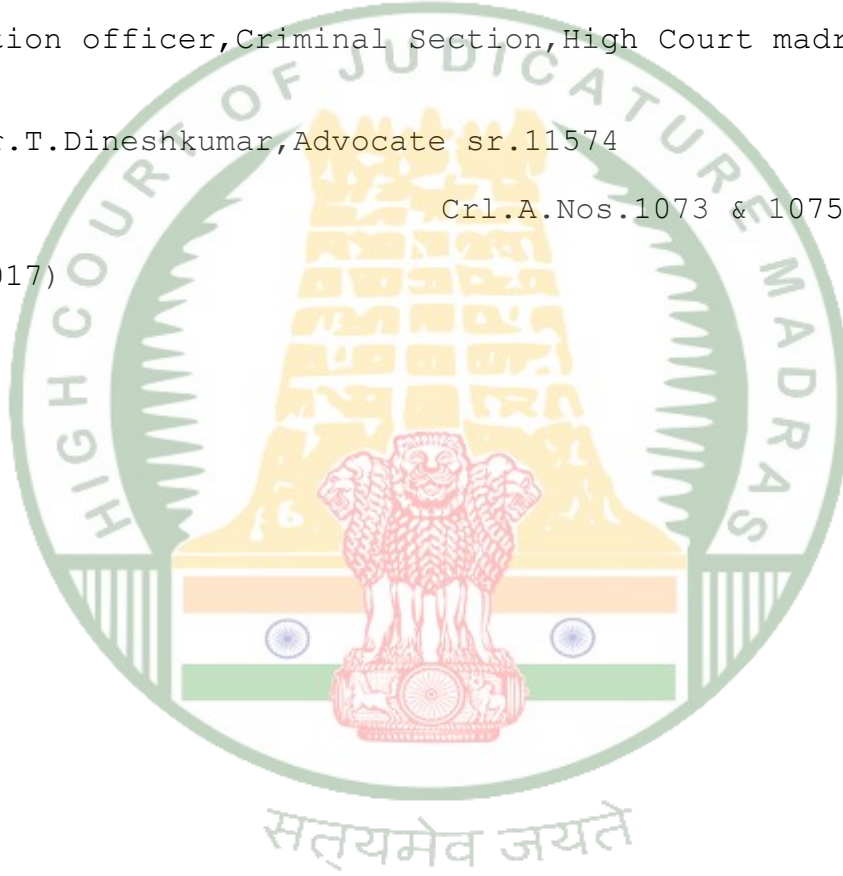
3.The Secretary,
Tamil Nadu Legal Services Authority,
High Court Buildings, Chennai

4.The Section officer, Criminal Section, High Court madras

+1cc to Mr.T.Dineshkumar, Advocate sr.11574

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ss(28/3/2017)



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