IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.1112 of 2007

A.Krishnan ... Appellant/Complainant

vs.

C.Panneerselvam ... Respondent/Accused

Criminal Appeal preferred under Section 378 Cr.P.C., to set aside the judgment dated 30.08.2008 made in C.A.No.58 of 2007 on the file of the I Additional Sessions Court, Salem and restore the judgment in C.C.No.611 of 2005 dated 16.03.2007 on the file of the learned Judicial Magistrate No.II, Salem.

For Appellant : Mr.V.Vijayakumar

For Respondent : Mr.C.K.M.Appaji

JUDGMENT

This appeal has been filed against the order of acquittal. The appellant/complainant has filed a private complaint against the respondent/accused for the offence under Section 138 of Negotiable Instrument Act, in C.C.No.611 of 2005, on the file of the learned Judicial Magistrate No.II, Salem. The trial Court, after trial, convicted the respondent/accused. Challenging the above said conviction and sentence, the respondent/accused filed an appeal in C.A.No.58 of 2007 on the file of the I Additional Sessions Court, Salem. The Lower appellate Court, by its judgment dated 30.08.2007, allowed the appeal and set aside the conviction and sentence imposed by the trial Court. Now, challenging the above order of acquittal, the present appeal has been filed by the complainant.

2. According to the appellant/complainant, the respondent /accused borrowed a sum of Rs.3,00,000/- as hand loan from him on 20.03.2005 and promised to repay the amount within a period of three months. In order to discharge the above said amount, on 26.03.2005, the respondent/accused issued a cheque for a sum of Rs.3,00,000/-, drawn on Dharmapuri District Central Co-operative Bank, Harur Branch. When the above cheque was presented for collection before the drawee bank on 26.03.2005, the cheque was returned with an endorsement "payment stopped by the drawer" through memo dated

30.06.2005. Thereafter, the appellant /complainant has issued a legal notice dated 16.07.2005 to the respondent/accused directing the respondent/accused to repay the amount. The respondent/accused sent a reply notice disputed the liability and stated that he has not issued any cheque to the appellant, but the disputed cheque has been lost by him at Salem bus stand on 03.02.2005. For that he has lodged a complaint before the Salem Police Town Station, and also given complaint to the concerned Bank on 15.02.2005 itself to stop the payment. Since the respondent/accused failed to repay the amount, the appellant/ complainant filed a private complaint. The learned Judicial Magistrate had taken cognizance and issued summons to the respondent.

3. The trial Court, considering all the above materials, framed charge against the accused/respondent and the accused denied the same. In order to prove its case, the appellant/complainant examined himself as P.W.1 and also marked 7 documents. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false and the respondent/accused examined himself as D.W.1 as well as one Rabic Basha, Manager, Dharmapuri District Co-operative Bank, Harur Branch, was examined as D.W.2 and also marked 8 documents on his side.

4. According to the accused/D.W.1, on 03.02.2005, he took the disputed cheque along with another cheque and he lost two cheques when he was travelling in a bus from Harur to Salem. Immediately, he sent the complaint to the Harur Police Station through certificate post and xerox copy of the same is marked as Ex.D2 and postal receipt issued by the Post Office was marked as Ex.D3. Thereafter, on 15.02.2005, he has given complaint to the concerned Bank informed about the missing of cheque, and to stop the payment, and also surrender the remaining cheques to the Bank. The said complaint is marked as Ex.D4. Thereafter, on 08.07.2005, he has given another complaint to the Harur Police Station and the copy of the same is marked as Ex.D5. Postal receipt is marked as Ex.D6 and Acknowledgement Card is marked as Ex.D7. Subsequent to that, on 17.05.2005, he has given complaint to the Deputy Registrar, Co-operative Societies and copy of the same is marked as Ex.D8. D.W.2, Manager of Dharmapuri Central Co-operative Bank, Harur Branch, admitted that the respondent/accused has given complaint on 15.02.2005 and he also admitted that the accused surrender the remaining cheques and asked him to stop the payment.

5. Considering all the materials, the trial Court convicted the respondent/accused. Challenging the same, the respondent /accused filed an appeal in C.A.No.58 of 2007 on the file of the I Additional Sessions Judge, Salem. The lower appellate Court, after elaborate argument, acquitted the accused from the charge levelled against him on the ground that the respondent/accused has raised probable defencne that

he lost the disputed cheque and he has given letter to the bank to stop the payment prior to the borrowel of the loan amount. But, the appellant/complainant failed to prove that there is no legally enforceable debt. Now, challenging the the above order of acquittal, the appellant/complainant filed the present appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

7. The learned counsel appearing for the appellant would contend that once the respondent/accused admitted the signature in the cheque, there is initial presumption against him that the cheque has been issued to discharge a legally enforceable liability. Even though, it is a rebuttal presumption, the respondent/accused failed to rebut the presumption by raising any probable defence. Apart from that, the respondent/accused said to have given a police complaint on 15.02.2005, through certificate of post and he also received acknowledgement from the police station and on the very same day he has given notice to the concerned Bank stating that the disputed cheque and another cheque have been lost and stop the payment. But, the respondent/accused has given reply notice to the legal notice on 27.07.2005 stating that he lost the disputed cheque on 03.02.2005 and there is a discrepancy. Apart from that the complaint given by the respondent/accused [Ex.D4] to the Bank there is no seal. D.W.2, the Manager of the Co-operative Bank stating that the he is working as Manager in Dharmapuri Central Co-operative Bank and the respondent also working in the said Bank and his evidence not supporting the respondent's case. In the above circumstances, the defence raised by the accused is not a probable defence and he has failed to prove the initial presumption, the lower appellate Court without considering the same, acquitted the respondent/accused. Hence, he prays for allowing this appeal.

8. The learned counsel appearing for the respondent would contend that it is a specific case of the complainant that the respondent borrowed a sum of Rs.3,00,000/- on 20.03.2005 and in order to discharge the above said amount, on 26.03.2005, the respondent/accused issued a cheque for a sum of Rs.3,00,000/-, drawn on Dharmapuri District Central Co-operative Bank, Harur Branch. But, prior to the alleged transaction, the respondent/accused has given a complaint to the police station on 03.02.2005, stating that the cheque has been lost and also given letter to the concerned Bank to stop the payment and he surrender the remaining cheque, D.W.2 the Bank Manager also admitted the same. With all those materials, the respondent raised probable defence and thereby the initial presumption was raised and absolutely there is no material available on the side of the complainant/appellant to establish that there is a legally enforceable debt.

Considering all those facts, the lower appellate Court rightly acquitted the accused and there is no reason to interfere with the judgment of the Court below. Hence, he prays for dismissing the appeal.

9. I have considered the rival submissions.

10. According to the appellant/complainant, on 20.03.2005 the respondent/accused borrowed a sum of Rs.3,00,000/- from him and promised to repay the said amount within a period of three months. Thereafter, to discharge the same, he issued a cheque on 26.03.2005. The respondent/accused admitted the signature found in the cheque. Once the accused admitted the signature in the cheque, under Section 139 of the Negotiable Instrument Act there is a presumption that the cheque has been issued to discharge the legally enforceable liability. Bit, it is a rebuttal presumption, it can be raised by a probable defence. Once the respondent/accused raised the initial burden and it is for the appellant/complainant to prove his case. The case of the respondent/accused is that he has lost the disputed cheque on 03.02.2005 when he was travelling from Harur to Salem by bus. Immediately, he has given complaint before the Harur Police Station through certificate of post and proved the same he has marked the copy of the complaint Ex.D2, Postal receipt Ex.D2. Apart from that on 15.02.2005, the respondent/accused has approached the Bank and given complaint stating that he lost the disputed cheque and requested the Bank to stop the payment. To prove the same, the copy of the complain was marked as Ex.D4. Subsequently, on 08.07.2005, he has given another complaint before the Harur Police station and the copy of the same was marked as Ex.D5, Postal receipt is Ex.D6 and acknowledgement card is marked as Ex.D7. Further, on 17.05.2005, the respondent/accused has given another complaint to the Deputy Registrar, Co-operative societies and copy of the same was marked as Ex.D8. In order to prove the same, the Manager of the Bank, one Mr.Rabic Basha was examined as D.W.2 and he has also admitted the same in his evidence. With all those materials, the accused has raised the initial presumption on him and now the burden is on the complainant to prove that there is a legally enforceable liability. But, except the oral evidence of P.W.1, absolutely there is no materials available on record to show that the appellant has advanced the loan amount to the respondent/accused, Court below considering the entire materials, has rightly come to the conclusion that the appellant failed to prove the case beyond any reasonable doubt and thereby acquitted the accused, Hence, I do not find any illegality or irregularity in the order passed by the lower appellate Court.

11. 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 principle 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 by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed 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 the acquittal recorded by 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.

12. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 30.08.2007 passed in C.A.No.58 of 2007 on the file of the learned I Additional Sessions Judge, Salem is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rrg

1.The I Additional Sessions Judge,
Salem.

2.The Judicial Magistrate No.II,
Salem.

3.Do Thro The Chief Judicial Magistrate,
Salem

4.Do Thro The Principal Sessions Judge, Salem

+1cc to Mr.Appaji, Advocate Sr.No.78819
+1cc to Mr.Vijayakumar, Advocate Sr.No.78570

MG(CO)
sm:6.6.2018