IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.1063 of 2006

G.Shanmugasundaram ... Appellant

vs.

K.Arumugam ... Respondent

Criminal Appeal preferred under Section 378 Cr.P.C., against the judgement dated 09.09.2006 passed by the learned Judicial Magistrate No.II, Coimbatore, in C.C.No.639 of 2004.

For Appellant : Mr.R.Karthikeyan for Mr.P.Srinivas

For Respondent : Mr.S.Gunalan

JUDGMENT

This appeal has been filed against an 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.639 of 2004, on the file of the learned Judicial Magistrate No.II, Coimbatore. The trial Court, after trial, acquitted the accused. Challenging the above said order of acquittal, the present appeal has been filed by the complainant.

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

The respondent/accused is running a textile business at Udumalpet. On 18.02.2004, the appellant/complainant has given a hand loan for a sum of Rs.3 Lakhs to the respondent/accused. In order to discharge the above said amount, the respondent/accused issued a cheque dated 22.03.2004, drawn in Catholic Syrian Bank, Udumalpet Branch. When the above cheque was placed before the drawee bank on 22.3.2004, the cheque was returned stating that the payment was stopped by the drawer. Then, the appellant/complainant issued a legal notice to the respondent/accused, and after complying all the legal formalities, he has filed a complaint before the Judicial Magistrate Court. The learned Judicial Magistrate had taken cognizance and issued process to the respondent.

3. In order to prove its case, the appellant/complainant examined himself as P.W.1 and exhibited 5 documents.

4. According to P.W.1, the respondent received a sum of Rs.3,00,000/- for hand loan and in order to discharge the said loan he issued a cheque on 22.3.2004 and when the above cheque was placed before the bank on 22.3.2004, the same was returned on the ground that the payment was stopped by the drawer. Then, he filed a complaint before the Judicial Magistrate Court against the respondent/accused for the offence under Section 138 of Negotiable Instrument Act.

5. Considering the above materials, the trial court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the respondent/accused examined himself as D.W.1 and he also marked 11 documents.

6. The specific case of the respondent/accused is that he had given 3 cheques as security to one of his friends, and after discharging the above loan, he received the cheques from him and on the way the above cheques were missing on 24.01.2004. Hence, he filed a complaint before the local Police Station on 28.01.2004, and the complaint was taken as C.S.R No.36/2004 and subsequently on 10.02.2004, the police also issued a certificate stating that the above said cheques were not traceable and the same were marked as Exs.D1 & D2. Apart from that, after receipt of the legal notice, he has also given reply and the same was not marked by the complainant. It is the specific case of the respondent/accused is that he never borrowed any amount from the complainant and there is no legally enforceable debt and he has no transaction with the appellant/ complainant. The trial court, considering all the materials available on record, acquitted the accused on the ground that there is no evidence to prove the offence against the respondent/accused.

7. Heard Mr.R.Karthikeyan, learned counsel appearing for the appellant/complainant and Mr.S.Gunalan, the learned counsel appearing for the respondent/accused and perused the materials available on record.

8. Even though the signature found in the cheque was admitted by the respondent/accused, he came out with a probable defence that the cheque was misplaced on 24.01.2004, to that effect he has given complaint to the local Police station on 28.01.2004 subsequently, the Police issued certificate on 01.02.2004 stating that the cheques were not traceable. According to the respondent/accused, the appellant has no

transaction with the accused and he has no occasion for issuing cheque to him. The appellant/complainant using the misplaced cheque, filed the complaint. It is a settled law that the initial presumption under Section 139 of the Negotiable Instrument Act can be raised by a probable defence which creates a doubt regarding the existence of a legally enforceable debt. In the instant case, the respondent/ accused raise the initial burden and it is for the petitioner/complaint prove his case. Except the evidence of P.W.1, there is no other evidence available to show that the respondent/accused borrowed the amount from the appellant and only in order to discharge the amount the cheques have been issued. Apart from that there is no evidence available to prove the legally enforceable debt also. Considering the above, the Court below acquitted the accused.

9. 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.

10. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 09.09.2006 passed in C.C.No.639 of 2004 on the file of the learned Judicial Magistrate No.II, Coimbatore is hereby confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rrg

To

1. The Judicial Magistrate No.II,
   Coimbatore.

2. do thro'Chief Judicial Magistrate,
   Coimbatore.

+1cc to Mr.S.Gunalan, Advocate, S.R.No.11339
+1cc to Mr.P.Srinivas, Advocate, S.R.No.11621

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GP(CO)
CS/19/06/17