IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.186 of 2008

Tamizharasi ... Appellant/Complainant

vs.

P.V.Ranganathan ... Respondent/Accused

Criminal Appeal preferred under Section 378 Cr.P.C., to call for the records pertaining to C.C.No.195 of 2006 on the file of the learned Judicial Magistrate No.I, Salem dated 23.11.2007 and set aside the order of acquittal recorded therein and convict the respondent for the offence under Section 138 of Negotiable Instrument Act.

For Appellant : Mr.K.V.Shanmuganathan

For Respondent : Mr.H.Maruthi Raj
Legal Aid Counsel.

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.195 of 2006, on the file of the learned Judicial Magistrate No.I, Salem. The trial Court, after trial, acquitted the respondent/accused. Now, 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:-
On 02.04.2006, the respondent/accused, borrowed a sum of Rs.1,90,000/- from the appellant/complainant, for business purpose. In order to discharge the above said liability, on the very same day, the respondent issued a cheque dated 02.04.2006, drawn on Indian Bank, Sankari Branch. When the above cheque was presented before the drawee bank on 10.04.2006, the cheque was dishonoured on the ground of "insufficient fund". Then, the appellant/complainant issued a legal notice to the respondent/accused directing the respondent/accused to repay the

amount. The respondent/accused sent a reply notice disputing the liability and stated that he has not borrowed any amount from the appellant/complainant. But, he has borrowed a sum of Rs.25,000/- from the husband of the complainant in the year,2001 and as security, he has given above cheque in the year,2001, subsequently, he has repaid the entire amount. Now using the said cheque, the complainant filed the present private complaint. Since the liability was not discharged by the respondent, the complainant filed the complaint. The learned Judicial Magistrate had taken cognizance and issued summons to the respondent.

3. In order to prove its case, the appellant/complainant examined herself as P.W.1 and also marked 7 documents. According to P.W.1, the respondent/accused borrowed a sum of Rs.1,90,000/- from her for business purpose and in order to discharge the above said amount, on the very same day, the respondent/accused issued a cheque dated 02.04.2006, drawn in Indian Bank, Sankari Branch and when the above cheque was presented before the drawee bank on 10.04.2006, the said cheque was returned on the ground of "insufficient fund". Then, after following the legal formalities, she filed a complaint against the respondent/accused for the offence under Section 138 of Negotiable Instrument Act. In support of her complaint, she filed returned Cheque[Ex.P1], Memo [Ex.P2], Debit Advice[Ex.P3], Legal Notice[Ex.P4], Acknowledgement Card[Ex.P5], Reply Notice [Ex.P6] and Notice [Ex.P7] as exhibits.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false and he examined himself as D.W.1 and disputed the liability and stated that he has not borrowed any amount from the appellant/complainant, but, he borrowed a sum of Rs.25,000/- from the husband of the complainant in the year,2001, at that time he has given the signed cheque as security. Subsequently, he has repaid the said loan amount. Now, using the above said cheque, the present complaint has been filed.

5. The trial Court, after considering the material available on record, come to the conclusion that the respondent/accused has no means to pay the loan amount of Rs.1,90,000/-. Apart from that except the cheque, there is no evidence available to show that the respondent/accused borrowed the said amount from the appellant/complainant and acquitted the accused. Now, challenging the the above said order of acquittal, the present appeal has been filed.

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 submit that in this case, the respondent/accused admitted the signature found in the cheque and hence there is a presumption under Section 139 of the Negotiable Instrument Act, that the cheque has been issued to discharge the liability. But, the accused failed to raise the initial presumption, the Court below without considering the same acquitted the accused on the ground that the appellant has not proved the means and there is no evidence to show that the money has been borrowed by the accused. Hence, he prays for allowing this appeal.

8. Per contra, the learned counsel appearing for the respondent would contend that the respondent examined himself as witness and he has categorically stated that he borrowed a sum of Rs.25,000/- from the husband of the complainant in the year,2001 and in order to discharge the same, he issued signed cheque. Subsequently, the respondent/accused repaid the entire loan amount. Now, using the said cheque, the present complaint has been filed, there is no legally enforceable debt, and he raised the initial presumption, but the appellant/complainant failed to prove the means and the cheque also not supported any material to show that the money has been borrowed by the respondent/accused. Considering all the materials, the trial Court correctly acquitted the accused/respondent and there is no reason to interfere with the judgment of the Court below. Hence, he prays for dismissal of this appeal.

9. I have considered the rival submissions.

10. It is the specific case of the appellant that the respondent/accused borrowed a sum of Rs.190,000/- on 02.04.2006 and in order to discharge the said loan amount, on the very same day, a cheque has been issued. But, it is the case of the respondent/accused that earlier the respondent has borrowed a sum of Rs.25,000/- from the husband of the complainant and in order to discharge the said loan amount, he has issued a signed cheque as security, which has been misused by the appellant/complainant, the present complaint has been filed.

11. The signature found in the cheque has been admitted by the respondent/accused. Hence, there is a presumption under Section 139 of the Negotiable Instrument Act. It is a settled law that the presumption under Section 139 of the Negotiable Instrument Act can be raised by a probable defence, creates a doubt regarding the existence of a legally enforceable debt. In the instant case, according to the respondent, he has borrowed a sum of Rs.25,000/- from the husband of the complainant and in order to discharge the same, a signed cheque was issued. Subsequently, the respondent/accused repaid the said amount. But, using the said cheque, the present complaint has been filed. Apart from that the complainant is also being a house

wife and she has no means to advance a sum of Rs.1,90,000/- to the respondent. With the above material the respondent has raised the presumption. But, 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 loan amount the cheque has been issued. The complainant has admitted in her cross examination that she is a the house wife and she has no means. The Court below considering the entire materials, has rightly come to the conclusion that the appellant failed to prove the case beyond 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 and the appeal fails and the same is liable to be dismissed.

12. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 23.11.2007 passed in C.C.No.195 of 2006 on the file of the learned Judicial Magistrate No.I, Salem is hereby confirmed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rrg

1.The Judicial Magistrate,
No.I, Salem.

Copy to:

The Section Officer,
Criminal Section,
High Court,
Madras.

+1cc to Mr.H.Maruthi Raj , Advocate sr.no.75212

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ssd(co)
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