

IN THE HIGH COURT OF JUDICATURE AT MADRAS
JUDGMENT RESERVED ON : 08.03.2016
PRONOUNCED ON : 12.04.2017
CORAM :
THE HONOURABLE MR. JUSTICE B.GOKULDAS
Crl.A.No.412 of 2008

Deepa

.. Appellant

Vs.

S.P.Navaneetha Krishnan

.. Respondent

PRAYER : Appeal is filed under Section 378 Criminal Procedure Code, against the judgment dated 08.04.2008 passed by the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore in CA.No.540 of 2007 acquitting the respondent herein and by setting aside the conviction and sentence passed by the Judicial Magistrate No.VII, Coimbatore in STC.No.3045 of 2005 dated 22.11.2007.

For Appellant : Mr.C.S.Dhanasekaran.

For respondent : Mr.P.G.Perumal Pandian.
Amicus Curiae.

J U D G M E N T

This Criminal appeal is filed against the judgment dated 08.04.2008 passed by the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore in CA.No.540 of 2007 acquitting the respondent and by setting aside the conviction and sentence passed by the Judicial Magistrate No.VII, Coimbatore in STC.No.3045 of 2005 dated 22.11.2007.

2. The brief facts of the case are as follows :-

The accused approached the complainant and borrowed a sum of Rs.5,00,000/-, for business purpose and the accused also issued a cheque drawn from Vijaya Bank, Saibaba Colony dated 05.11.2005. The complainant presented the cheque in her account Canara bank, Saibaba Colony, on 11.11.2015. The said cheque was returned with an endorsement "insufficient balance". On 16.11.2005, the complainant sent notice to the accused, but, the accused refused to receive the notice and the same was returned on 25.11.2005. Hence, the complainant preferred the complaint under Section 138 of the Negotiable Instruments Act.

3. The complainant in order to prove her case examined herself as PW1 and her father as PW2 and produced the cheque, bank memo, debit advice, advocate notice, acknowledgment card, Certificate of posting, undelivered notice as Ex.P1 to Ex.P7 and no oral evidence was adduced and the accused in support of his

contention adduced documentary evidences viz., Advocate notices as Ex.D1 and Ex.D2 and no oral evidence was adduced on the side of the accused.

4. The trial court on the basis of the available records found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted him to undergo simple imprisonment for a period of one year, on the ground that PW2 has stated that a sum of Rs.5,00,000/- was handed over to the accused by PW1 in the presence of him. Aggrieved against the said order, the accused preferred an appeal in CA.No.540 of 2007 and the complainant preferred revision in Crl.RC.10 of 2008 before the lower appellate Court.

5. The lower appellate Court tried both the review petition filed by the complainant and the appeal filed by the accused together, and dismissed the revision and allowed the appeal filed by the accused by setting aside the order of the trial Court, on the ground that the trial Court has not properly considered the oral and the documentary evidence adduced on both sides. Aggrieved against the same, the complainant is before this Court by way of present appeal.

6. Heard the rival submissions made on both sides and perused the records.

7. The learned counsel for the appellant/complainant has stated that the PW1 has handed over the cheque for a sum of Rs.5,00,000/- to the accused in the presence of her father/PW2. PW2 also reiterated in his evidence about his presence during the said transaction between the appellant and the accused. The accused has not replied to the statutory notice issued by the appellant. Further, the learned counsel contended that the accused has not given any cheque to discharge his debt. The cheque was issued only for the security purpose, for the business transaction.

8. The learned counsel for the appellant in support of his contention relied on the judgment of the Hon'ble Supreme Court reported in 2011 ACD 7 (SC) 7 - Rangappa v. Mohan, wherein it is held as follows :

"15. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."

9. The learned Amicus Curiae appearing for the respondent submitted that two cheques were issued by the respondent towards security purpose only for the chit fund transaction. For rebutting the presumption under Section 139 of the Negotiable

Instruments Act, the preponderance of probabilities, the accused has successfully rebutted the presumption.

10. The learned Amicus Curiae appearing on behalf of the respondent/accused relied on the judgment of this Court reported in 2012 (3) MWN (Cr.) (DCC) 24 (Mad) - M.Pachamurthy v. The Fertilizers and Chemicals Travancore Ltd. Wherein, this Court also placed reliance on the decision of the Supreme Court reported in 2010 (11) SCC 441 - Rangappa V Sri Mohan, it is held that

"....the said presumption is a rebuttal presumption and for rebutting the same, the degree of proof needed is not comparable to the degree of proof required on the part of the prosecution or complainant and that the Accused need not adduce positive evidence and he can simply rely on the answers elicited during cross examination of the complainants witnesses and the discrepancies found in the evidence, both oral and documentary adduced on the side of the complainant to rebut such presumption by preponderance of probabilities."

11. On perusal of the entire records, it is seen that the accused has issued two cheques. The daughter filed the present case against the accused and the subsequent cheque was used by the complainant's father to instigate the accused in the other case. Both the cheques were issued for the security purpose of the chit fund. The accused admitted the signature on the disputed cheque, whereas the content and the ink in both the cheque differs with each other. The accused has not even chosen to lead any oral evidence and he has not even chosen to issue any reply to the statutory notice and the same would be enough to show that there was admission on his part. This Court is not in a position to accept the said contention raised on behalf of the appellant. For rebutting the presumption under Section 139 of the Negotiable Instruments Act, the preponderance of probabilities, the accused has successfully rebutted the presumption. The appellant has not discharged the reverse burden of proof on the rebuttal of the presumption.

12. PW2 has also stated that the accused has issued another cheque for Rs.3,00,000/-, PW2 has also instigated separate case against the accused. Admittedly, already there is an existing dispute between the accused and the daughter of PW2, on what basis, PW2 has given another huge sum to the accused, the cheque used by PW2 is the very next cheque disputed before this Court in this case, which is fatal to the case of the complainant. The complainant also failed to mention the date and place where the transaction has taken place and failed to submit any note entry or diary to support her case. The accused has clearly

proved his liability that he issued two cheques towards security purpose only for the chit fund transactions. The complainant failed to prove that the cheque was issued for the loan transaction. The trial Court committed an error in holding the accused guilty for the offence. The lower appellate Court has properly appreciated the evidence and arrived at a conclusion in acquitting the accused. This Court uphold the judgment of the lower appellate Court and finds no illegality, infirmity or perversity in the judgment passed by the lower appellate Court.

13. Before parting with the matter, this Court places on record the commendable services rendered by Mr.P.G.Perumal Pandian, learned counsel appointed as Amicus Curiae for the respondent. Mr.P.G.Perumal Pandian, learned counsel is entitled to get a remuneration of Rs.5,000/- (Rupees Five Thousand only) from the Tamil Nadu State Legal Service Authority, High Court, Madras.

14. In the result, the criminal appeal stands dismissed, by confirming the judgment passed by the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore in CA.No.540 of 2007 dated 08.04.2008.

-s/d-
Assistant Registrar(CSV)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.II, Coimbatore.
2. The Judicial Magistrate No.VII, Coimbatore.
3. The Member Secretary
Tamil Nadu Legal Services Authority,
High Court, Madras.
4. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.CS.Dhanasekaran Advocate sr 22309

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