

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.10.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Criminal Appeal No.346 of 2012

Kanti Lal V. Jain

...Appellant/Respondent/
Complainant

Vs

1. M/s Kutiappa Silks
59, Ramachandra Road,
R.S. Puram,
Coimbatore - 2

2. Nachimuthu

3. Palanivel

4. Sakthivel

5. Marudavel

6. Kumaravel

..Respondents/Appellants/
Accused

Appeal filed under Section 378 of Criminal Procedure Code against the judgment of acquittal of the respondent/accused dated 21.11.2011 in 88 of 2011 passed by the lower appellate Court, the 1st Additional District and Sessions Judge, Coimbatore - 1, reversing the judgment of conviction dated 28.03.2011 passed by the trial Court Judicial Magistrate No.V, Coimbatore 2 in C.C.No.60 of 2006.

For Appellant : M/s Rajendra Prasad Tayal
For respondents: MrG. Karthikeyan

JUDGMENT

For the convenient sake, the parties may be referred to as the complainant and the accused.

2. It is the case of the complainant that A.1 is a partnership firm and A.2 to A.6 are his partners. It is the further case of the complainant that A.1 had issued 32 cheques

of various amounts on various dates to one Mr.Rajkumar Chopda, Proprietor of M/s Manek Syndicate, Coimbatore - 1 and that the said Mr.Rajkumar Chopda has discounted 32 cheques with the complainant and endorsed the said cheques in favour of the complainant after receiving the due consideration on 13.12.2004, 28.12.2004 and 4.1.2005. The complainant, being the " holder in due course" of 32 cheques, deposited the same in her bank account and the cheques were returned unpaid on 13.04.2005 with an endorsement " payment stopped by the drawer ". The complainant issued notice dated 23.04.2005 under Sec.138 of Negotiable Instruments Act to the accused. The accused received the statutory notice, but sent belated reply notice dated 01.06.2005 denying the allegation. Hence the complainant initiated a prosecution in C.C.No.60 of 2006 before the Judicial Magistrate No.V, Coimbatore-2 for the offence punishable under Sec.138 of Negotiable Instruments Act against the accused.

3. On receipt of summons, the accused appeared and he was furnished with the copy of the complaint. When the accused was questioned about the substance of the accusation, the accused denied the same.

4. On behalf of the complainant, the complainant's husband examined himself as P.W.1 and marked Exs.P.1 to P.11.

5. After the evidence of the prosecution was over, the accused was questioned under Sec.313 of Criminal Procedure Code about the incriminating circumstances, which they denied. The accused Sakthivel (A.4) examined himself as defence witness and marked Exs.D.1 to D.8.

6. After considering the evidence on record and the arguments of either side, the trial Court, by judgment dated 28.03.2010 in C.C.No.60 of 2016 convicted the accused under Sec.138 of Negotiable Instruments Act and sentenced them to undergo one year rigorous imprisonment and compensation of Rs.10,00,000/- was awarded under Sec.357(3) of Criminal Procedure Code payable to the complainant.

7. Challenging the conviction and sentence, the accused preferred Criminal Appeal No.88 of 2011, which was heard by the learned I Additional District and Sessions Judge, Coimbatore-1, who, by the impugned judgment dated 21.11.2011, acquitted the accused. Aggrieved by which, the complainant has filed the present appeal against acquittal.

8. Heard the learned counsel for the complainant and the learned counsel for the accused.

9. The learned counsel for the complainant submitted that the first appellate court had failed to appreciate the evidence adduced by the complainant and had acquitted the accused on

erroneous reasonings inasmuch as the first appellate court has not considered the presumption under Sec.139 of the Negotiable Instruments Act in the proper perspective. The learned counsel also submitted that the accused did not deny the execution of the cheques and therefore, the presumption under Sec.139 of the Negotiable Instruments Act should have been invoked to uphold the conviction and sentence.

10. Per contra, the learned counsel for the accused refuted the contentions and submitted that the order of acquittal passed by the first appellate court deserves to be confirmed.

11. This Court gave its anxious consideration to the rival submissions.

12. In *Arulvelu and another vs State* represented by the Public Prosecutor and another reported in 2009 (10) SCC 206, the Hon'ble Supreme Court has held as follows:

36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.

13. It is the specific case of the complainant that there was no privity of contract between the complainant and the accused and that the accused had issued the impugned cheques to Mr.Rajkumar Chopda, who, in turn, has discounted the cheques with the complainant. Thus, the complainant is a "holder in due course" and in law, he can maintain a complaint for an offence punishable under Sec.138 of Negotiable Instruments Act. However, it should have to be seen whether the complainant had proved that the cheques were issued by the accused in discharge of a legally enforceable debt to Mr.Rajkumar Chopda.

14. Admittedly, in this case, Mr.Rajkumar Chopda was not examined as witness. The presumption under Sec.139 of Negotiable Instruments Act can be invoked only if the complainant proves beyond reasonable doubt certain minimum facts. In this case, the accused examined himself as witness and has established that 32 cheques were given to Mr.Rajkumar Chopda in trust and not towards discharge of any legally enforceable debt and that, when

Mr.Rajkumar Chopda did not supply the materials, for which, the cheques were issued, the accused had given instructions to their bank for " stop payment". The accused also filed a suit in O.S.No.668 of 2005 against Mr.Rajkumar Chopda for mandatory injunction directing him to return the impugned cheques. That apart, Mr.Rajkumar Chopda has issued two indemnity bonds dated 03.12.2004, which were marked as Exs.D.7 and D.8, wherein, he had undertaken to return the cheques, as he was not able to procure the textile goods from North India for supplying to the accused.

15. In a criminal case, it is not necessary for the accused to disprove the case of the prosecution beyond reasonable doubt. If the accused is able to satisfy the court by legally acceptable evidence that the case of the prosecution lacks bona fide, the accused will be entitled to benefit of doubt.

16. In this case, the first appellate court has considered all these aspects and has held that the complainant had failed to prove the case against the accused beyond reasonable doubt.

17. In such view of the matter, bearing in mind the law laid down by the Hon'ble Supreme Court cited supra, this Court is of the view that this is not a fit case to interfere with the order of acquittal passed by the first appellate court. In the result, the appeal is devoid of merits and the same is dismissed and the Judgment and Decree passed by the 1st Additional District and Sessions Judge, Coimbatore - 1 in Criminal Appeal No.88 of 2011 dated 21.11.2011 are confirmed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The 1st Additional District and Sessions Judge, Coimbatore - 1
 2. The Judicial Magistrate No.V, Coimbatore-2
 3. The Public Prosecutor, High Court, Madras.
 4. The Section Officer,
Criminal Section, High Court, Madras.
- + 1 cc to Mr. G. Karthikeyan, Advocate SR.75223
+ 1 cc to Mr. Rajendra Tayal Advocate SR.75907

Cr1.A.No.346 of 2012

VGI (CO)

EU (16/11/2017)

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