IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13..12..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.561 of 2007

B.Kumar ... Appellant / Accused

-Versus-

C.Rajammal ... Respondent / Complainant

Appeal filed under Section 378 of Cr.P.C. against the order of acquittal dated 25.05.2007 recorded in S.T.C.No.33 of 2006 by the learned Judical Magistrate, Kotagiri,The Nilgiris District.

For Appellant : Mr.A.Sermaraj

For Respondent : Mr.C.Ramkumar

JUDGEMENT

Challenging the order of acquittal the present appeal has been filed by the complainant.

2. The petitioner filed a private complaint in C.C.No.1279 of 2005 before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, alleging that the respondent had committed an offence punishable under Section 138 of The Negotiable Instruments Act. The learned Magistrate, by judgment dated 25.07.2007, acquitted the accused. Challenging the same, the complainant is before this court with this criminal appeal.

WEB COPY

3. The case of the complainant in brief is as follows: The accused in order to discharge her liability issued a cheque dated 21.11.2005 for Rs.1,00,000/- in favour of the complainant drawn on State Bank of India, Kotagiri Branch. According to the complainant, when the above cheque was presented for collection, it was returned on the ground of "fund insufficient". Hence, he issued a legal notice dated 02.12.200 to the accused which was served on the accused on 07.12.005. But, there was no response. Hence, he filed the present complaint.

https://hcservices.ecourts.gov.in/hcservices/

4. Before the trial court on the side of the complainant, he himself examined as P.W.1 and 5 documents were exhibited. Ex.P.1 is the cheque in question; Ex.P.2 is the memo returning the cheque by the drawer bank namely, State Bank of India, Kotagiri Branch; Ex.P.3 is the memo returning the cheque by the drawee bank, namely, Vijaya Bank, Kotatiri; Ex.P.4 is the statutory notice dated 02.12.2005; and Ex.P.5 is the postal acknowledgment card dated 07.12.2005. P.W.1 has spoken to the fact that the cheque in question was issued by the accused in discharge of her legally enforceable liability. When the said cheque was presented for encashment, the same was returned by the bank on 28.11.2005 with an endorsement "fund insufficient". He has further spoken to about all the other subsequent facts including the issuance of statutory notice. On the side of the respondent, she examined one Shri.Jayapalan as R.W.1 and she was examined herself as R.W.2. Exs.D.1 and D.2 were marked. According to R.W.2, the accused, she borrowed only a sum of Rs.30,000/- as loan from the complainant and she had been regularly paying interest without any default and when she repaid the principal amount of Rs.30,000/- the respondent refused to receive the same and demanded a sum of Rs.30,000/- towards principal and Rs.24,000/- towards interest and he gave a chit containing details of the dues (Ex.R.1) wherein R.W.1 signed as a witness. She has stated that she never never borrowed Rs.1,00,000/- from the complainant and the cheque in question was not at all issued for the discharge of any legally enforceable debt or liability and an unfilled signed cheque was issued only as a security for the loan of Rs.30,000/- which was actually availed by her. R.W.1 deposed supporting the defence plea. Ex.R.2 are account books containing loan details maintained by the accused which are self serving document.

5. Having considered the rival contentions, the trial court accepted the defence taken by the respondent and acquitted her from the charges. Aggrieved over the same, the complainant is now before this Court with this appeal.

6. The learned counsel for the appellant would contend that once respondent admitted her signature on the cheque, it was not open for her to urge that although the cheque had been dishonored, no offence under the Act is made out. Once the respondent admitted her signature on the cheque in question, there arises a presumption under Section 139 of The Negotiable Instruments Act that the cheque was issued to discharge of her liability and it was for the respondent to rebut the presumption raised against her that the cheque was not at all issued for the discharge of any legally enforceable debt. However, the trial court, without properly considering the facts and circumstances

WEB COPY

of the case and the legal position in this regard, erroneously shifted the burden upon the complaint and held that he failed to establish the date, time and the place where he advanced loan to the respondent and acquitted the respondent from the charges which is not legally sustainable. He, therefore, prays for setting aside the order of acquittal and to convict the respondent for offence under Section 138 of the Act.

7. Per contra, the learned counsel for the respondent submitted that even though the respondent admitted her signature in the cheque in question, accepting the probable defence set up by the respondent, the trial court rightly acquitted him from the charges and that the same does not require any interference at the hands of this court.

8. I have considered the rival submissions carefully.

9. In this case, admittedly, the respondent admitted that the cheque in question has been signed by her. Thus, the initial presumption was against the respondent. Of course, it is a rebuttable presumption. The accused can rebut the presumption by raising a probable defence.

10. The respondent admitted that she had borrowed a sum of Rs.30,000/- as loan. But, according to her, the cheque in question was never intended to be issued for realizing any money and it was given to the appellant only as a security as blank cheque. It is her defence that she had been regularly paying interest for the loan of Rs.30,000/- which was actually availed by her and when she wanted to repay the principal amount, the appellant refused to receive the same and demanded huge amount towards interest. The appellant himself admitted that there is a due of Rs.30,000/- towards principal and Rs.24,000/- towards interest. She placed much reliance on Exs.D.1 and D2.

11. In the complaint, the appellant had not at all stated the date and where the loan was advanced and the manner in which it was advanced, i.e, whether in cash or through cheque. He has also not produced any other record to support his case that the respondent availed a loan of Rs.1,00,000/- and also to prove fact that he was having sufficient sources of income.

12. Except the evidence of the complainant (P.W.1) absolutely, there is absolutely no other evidence to establish his case. The trial court while examining the probable defence of the respondent and having regard to the facts and circumstances of the case, rightly shifted the burden upon the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

appellant to prove that the respondent was really indebted to him and that the cheque in question was handed over to him by the respondent only to discharge a legally subsisting debt as alleged in the complaint. The learned Magistrate has given cogent and convincing findings for having accepted the defence raised by the respondent in preference to the case of the appellant and hence re-shifted the burden on the appellant to prove existence of a legally recoverable debt. The complaint is bereft of particulars, such as, the date, when and the place where the loan was advanced and the mode of payment. As rightly held by the learned Magistrate, the appellant did not produce any oral or documentary evidence to prove his sources of income and the loan transaction. When the respondent is able to rebut the presumption by raising probable defence, the burden is shifted on the appellant to prove the existence of legally recoverable debt, which he failed to discharge. The learned Magistrate was right in holding that the appellant has failed to discharge his burden to prove that the cheque in question was issued by the respondent in discharge of any legally recoverable debt. Therefore, I do not find any infirmity in the judgment of acquittal recorded by the learned Magistrate warranting interference in the appellate jurisdiction. The appeal lacks merit and the same deserves to be dismissed.

13. In the result, this criminal appeal is dismissed and the order of acquittal dated 25.05.2007 recorded by learned Judicial Magistrate, Kotagiri, in S.T.C.No.33 of 2006 stands confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Judicial Magistrate, Kotagiri,
The Nilgiris District.
2.-do-Thro The Chief Judicial Magistrate, The Nilgiris.

+ 1 cc to Mr. C. Ramkumar, Advocate Sr.89299

Copy to: The Section, Criminal Section, High Court, Madras.

Criminal Appeal No.561 of 2007

SKS(CO)

EU(05/07/2018)

सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/