IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.408 of 2016

Rathnamma ... Appellant

Versus

H.C.Munielappa ... Respondent

Prayer: Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, to set aside the order of acquittal dated 24.07.2015 made in S.T.C.No.166 of 2012 on the file of the Judicial Magistrate Fast Track, Hosur and consequently punish the accused as prayed for by the complainant in the said S.T.C.No.166 of 2012.

For Appellant : Mr.J.Ramakrishnan
For Respondent : Mr.A.Balamurugan

JUDGMENT

The complainant is the appellant.

2.This Appeal is directed against the order of acquittal dated 24.07.2015 in S.T.C.No.166 of 2012, on the file of the learned Judicial Magistrate Fast Track, Hosur and consequently punish the accused.

3.The facts necessary for the disposal of the appeal are as follows:

[i] The accused had borrowed Rs.5,00,000/- (Rupees Five Lakhs only) from the complainant on 04.11.2011. He had issued the cheque [Ex.P.1] dated 01.06.2012 drawn on Corporation Bank for the discharge of the said debt. When the cheque was presented for collection, the same was dishonoured with the remarks “Funds Insufficient”. Ex.P.2 is the return memo. The complainant had issued a legal notice on 03.07.2012 [Ex.P.3] calling upon the respondent to repay the said cheque amount. The legal notice was returned as “Intimation given to sender”. The respondent had failed to make the payment of the said amount. Hence, the complaint. The complainant examined her herself examined as P.W.1. The Manager of her Bank was examined as P.W.2.

[ii] The respondent pleaded not guilty. His case is that he is a real estate broker. He took a room for rent from the complainant's husband and run his business. He used to keep signed cheques in his office for business purposes. He became a subscriber to a chit promoted by a relative of the complainant. A sum of Rs.60,000/- was due to be paid by the respondent towards the chit.

[iii] The respondent met with an accident in the month of January 2010. He was compelled to take rest for two years. In the meantime, in his absence, the husband of the complainant took forcible possession of the office room of the respondent. He broke open the office room and stealthily removed two cheques from his office. One of the cheques was used to file a case under Section 138 of the Negotiable Instruments Act in the name of the complainant's brother Rajanna before a Court at Bangalore. Another cheque was misused and the present case has been filed through the complainant. According to him, he has not borrowed any amount from the complainant and the cheque in question was not issued for the discharge of any liability. He examined himself as D.W.2. The Bank Manager of his Bank was examined as D.W.1. D.W.3 was examined to show that the office room of the respondent was taken possession by the complainant.

[iv] The Trial Court accepted the case of the respondent. It acquitted the accused holding that the complainant has failed to prove the case beyond reasonable doubt. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

4. The learned counsel appearing for the appellant would submit that the Trial Court has committed an error in coming to the conclusion that the complainant has failed to prove the case inasmuch as the onus is on the respondent to rebut the presumptions drawn against him. The learned counsel relied on the decisions in ***VINOD KUMAR vs. STATE OF HARYANA [2015 (3) CRIMES 237 (SC)]*** and ***MURALIDHAR vs. STATE OF KARNATAKA [(2014) 5 SCC 730]*** to submit that the Appellate Court in an appeal against acquittal has full power to review and reconsider the evidence. However, the Hon'ble Supreme Court has also pointed out that the Appellate Court should be reluctant to interfere with acquittal because in case of acquittal, there is double presumption in favour of the accused.

5. The learned counsel appearing for the respondent would submit that there is no material to hold that the respondent borrowed money from the appellant as alleged by her and that therefore, the Trial Court was justified in acquitting the accused.

6. I have heard the arguments made on either side and perused the materials available on record.

7. It is not in dispute that the cheque [Ex.P.1] in question belongs to the respondent and it bears his signature. Therefore, it should be presumed that it was drawn for the discharge a legally enforceable debt. It is to be seen whether there are materials to conclude that the respondent rebutted the presumptions drawn under Sections 118 and 139 of the Negotiable Instruments Act.

8. The complainant [P.W.1] has admitted that the respondent was a real estate broker and he run his office in a room that was rented out by her. She would also admit that as the respondent had not turned up to his office for nearly two years, she took possession of the room. It is also her admission that the respondent was a subscriber to the chit promoted by her relative. The definite case of the respondent is that two signed cheques kept in his office was stealthily taken away by the complainant's husband and one of the cheques was used to file the present complaint and the another cheque was misused to file a case in the name of the brother of the complainant.

9. The complainant would state that she lent money on 04.11.2011. As per the statement of the account [Ex.P.5] of the complainant, she has withdrawn Rs.4,00,000/- on 04.11.2011. However, the cheque is dated 01.06.2012. In her evidence, she has stated that her daughter has written the contents in the cheque. It is also her admission that the respondent handed over undated cheque and she has written the date on the cheque.

10. In order to rebut the presumptions, it is open to the respondent to place reliance on the evidence let in by the complainant. The complainant in her evidence would state that on the date [04.11.2011] of the loan, the case filed against the respondent by her brother on the strength a cheque issued by the respondent was pending. It appears to be a improbable story. Nobody will come forward to part with Rs.5,00,000/- which is fairly a huge amount, when a case for dishonour of cheque was pending against the borrower.

11. It is significant to note that the complainant claimed that she lent Rs.5,00,000/- on 04.11.2011. The cheque is also drawn for Rs.5,00,000/-. It is difficult to believe that the complainant lent money without any agreement for payment of interest. The complainant did not charge any interest and there is no explanation for the same. The above mentioned circumstances, in my considered view, are sufficient to hold that the respondent has rebutted the presumptions drawn against him under Sections 118 and 139 of the Negotiable Instruments Act.

12. Once the presumptions drawn against the respondent had been rebutted by him, the onus thereafter shifts onto the complainant. It is for the complainant to show that she has in fact lent money as claimed by her. Admittedly, there is no contemporaneous document to show that the complainant lent Rs.5,00,000/- on 04.11.2011. Except the disputed cheque and the interested oral testimony, the complainant has no other evidence to prove that she has in fact lent Rs.5,00,000/-. The Trial Court having regard to the facts and circumstances of the case, has taken a reasonably possible view. I do not find any valid ground to take a different view. The appeal is liable to be dismissed.

13. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Judicial Magistrate Fast Track, Hosur in S.T.C.No.166 of 2012 on 24.07.2015 is hereby confirmed.

23.08.2017

Index : Yes / No
Internet: Yes
sri

To

1.The Judicial Magistrate Fast Track,
Hosur.
2.The Public Prosecutor,
High Court, Madras.

N.AUTHINATHAN, J.,

sri

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