

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 01.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.444 of 2016

R.D.Venkatesh

... Appellant

versus

D.M.Ariyappan

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 15.07.2015 in C.A.No.44 of 2013, on the file of the learned Additional District and Sessions Judge, Krishnagiri at Hosur and confirm the order of conviction dated 23.08.2013 in S.T.C.No.312 of 2013 passed by the learned Judicial Magistrate No.II, Hosur.

For Appellant : Mr.R.Baskar

For Respondent : Mr.K.Selvarangan

J U D G M E N T

सत्यमेव जयते

The complainant in S.T.C.No.312 of 2013 on the file of the learned Judicial Magistrate No.II, Hosur, is the appellant herein. It is a private complaint filed under Section 138 of the Negotiable Instruments Act. The complaint has been filed on the allegations that the respondent borrowed Rs.2,00,000/- from him. For the discharge of the said liability, he has handed

over a post-dated cheque [Ex.P.1] [bearing No.170852 dated 01.07.2007 for Rs.2,00,000/-]. It was dishonoured when presented for collection on 24.10.2017 through ICICI Bank Ltd., Hosur, due to “funds insufficient” in the account of the respondent. The cheque was again represented to the said Bank for encashment on 31.12.2007 and again, the cheque was dishonoured by the Bank with remarks “funds insufficient”.

2. The complainant issued legal notice [Ex.P.7] dated 05.01.2008 calling upon the respondent to repay the amount of Rs.2,00,000/- covered by the cheque. The respondent sent his reply on 28.01.2008. According to him, he has not borrowed any amount as alleged by the complainant. As the respondent failed to make payment, he has filed the complaint. The present complaint was filed on 19.02.2008. The complainant examined himself as P.W.1 and examined two Bank Officials [P.W.2 and P.W.3] and marked 12 documents [Ex.P.1 to Ex.P.12] in support of his case.

3. The respondent pleaded not guilty. His case is that, he purchased a TATA Sumo Car bearing Registration No.TN-24-N-7102 in the name of complainant that, the complainant forcibly taken possession of the vehicle from his driver [D.W.3] that, the bank records and signed cheques kept in the car were also taken away by the complainant and one of the said cheques was

misused and the complaint has been lodged. He has examined himself as D.W.2 and examined Bank Official [D.W.1], Driver - Sivakumar [D.W.3] and marked 7 documents [Ex.D.1 to Ex.D.7] in support of his defence. The learned Judicial Magistrate No.II, Hosur, has accepted the case of the complainant and convicted the respondent.

4. Assailing the said conviction, the respondent approached by way of an appeal in C.A.No.44 of 2013 before the learned Additional District and Sessions Judge, Krishnagiri at Hosur. The Appellate Court on an analysis of the evidence available on record held that, the complainant had failed to establish his case beyond reasonable doubt and acquitted the accused of the offence under Section 138 of the Negotiable Instruments Act. Aggrieved by the order of acquittal, the appellant filed the present appeal after obtaining leave.

5. The learned counsel appearing for the appellant would submit that the First Appellate Court has committed error in not drawing presumption under Section 139 of the Negotiable Instruments Act. He would also submit that the First Appellate Court has not properly analysed the evidence on record.

6. The learned counsel appearing for the respondent advanced his arguments in support of the judgment of the First Appellate Court.

7. It is not in dispute that the cheque [Ex.P.1] belongs to the respondent and it bears his signature. Therefore, in the light of the decision in ***RANGAPPA vs. SRI MOHAN [(2010) 11 SCC 441]***, it can be presumed that the cheque has been issued for the discharge of a legally enforceable debt. However, the presumption is rebuttable and it is for the accused to rebut the presumption. According to the respondent, he has purchased a car in the name of the complainant, as he was his friend that, the complainant taking advantage of the fact that, the registration stood in his name forcibly took possession of the car and that, he stealthily taken away the bank records, two signed cheques kept in the car and one of the cheques [Ex.P.1] has been misused for filing the present complaint. It is also his case that, in respect of the other cheque [Ex.P.9], the complainant collected amount from the bank and subsequently, he repaid the amount, after he [respondent] lodged a complaint to the Bank.

8. The complainant claims that the said car belongs to him that, the respondent used to borrow the car from him for his use and that, Ex.P.9 cheque has nothing to do with the transaction in question and the amount

covered by Ex.P.9 cheque was repaid, as the Bank wrongly credited the amount to the account of his Proprietary Concern, namely, R.D.V. Constructions. Ex.P.9 is an Indian Bank cheque [Rayakotta]. P.W.2, P.W.3 are Indian Bank Rayakotta Branch Officials. The Bank Officials admitted that the respondent made a complaint on 26.03.2008 in respect of Ex.P.9 cheque and after enquiry, the amount payable under Ex.P.9 was credited to the account of the respondent.

9. The evidence of Driver - Sivakumar [D.W.3] would show that the possession of the car was forcibly taken by the complainant and the cheques kept in the car were stealthily taken away by the complainant. It appears that the complainant and the respondent had a dispute over the ownership of the car. The car was purchased by availing loan from ICICI Bank. The respondent produced payment receipts [Ex.D.2] to show that installments due to the Bank for the car loan was paid by him. These receipts stood in the name of the complainant. However, the receipts were produced by the accused.

10. The cheque in question was dishonoured initially on 25.10.2007. Ex.P.9 cheque is dated 13.11.2007. It is significant to note that Ex.P.9 cheque was issued after Ex.P.1 cheque was dishonoured on 25.10.2007

[Ex.P.3]. The respondent lodged complaint [Ex.D.3] to the Inspector of Police, Rayakottai, in respect of Ex.P.9 cheque. He has also lodged complaint [Ex.D.7] to the Branch Manager of the Indian Bank, Rayakottai. The learned counsel appearing for the appellant would submit that the respondent had several transactions with the complainant. Ex.P.12 is a letter alleged to have been given by the respondent. As per this document, the respondent acknowledged receipt of Rs.5,00,000/- from the complainant. This letter is dated 03.10.2006. The cheques are of the year 2007.

11. In ***KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]*** it has been held that “the standard of proof required on the part of an accused is “preponderance of probabilities”. In the case at hand, the respondent in order to rebut the presumption has adduced evidence. The Court can also take into consideration the circumstances appearing in the evidence to determine whether the presumption should be held to be sufficiently rebutted.

12. The complainant claimed that the cheque was issued by the respondent at the time of taking loan of Rs.2,00,000/- from him. However, in the complaint, the date on which, the loan was given to the respondent has not been stated. Ex.P.9 cheque is dated 13.11.2007. However, the amount

collected by the complainant under Ex.P.9 cheque was returned to the respondent. It is also significant to note that a huge sum of Rs.2,00,000/- as loan was paid without any agreement for payment of interest. There is no explanation for the same. He did not charge any interest. In his evidence, the complainant would state that he has not shown the loan in question in his income tax accounts. The Hon'ble Supreme Court in **KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]** has held that Courts have to take notice that ordinarily in terms of Section 269-SS. Income Tax Act, any advance taken by way of loan of more than Rs.20,000/- had to be made by an account payee cheque only. Under these circumstances, it can be safely concluded that the respondent has rebutted the presumption under Section 139 of the Negotiable Instruments Act.

13. Once the presumption is rebutted, it is for the complainant to prove that the cheque was issued towards enforceable liability. As already pointed out, the complainant has not produced any reliable evidence to show that he lent Rs.2,00,000/- to the accused. His mere oral evidence is not sufficient to hold that he lent money to the accused.

14. The First Appellate Court has carefully considered the testimony of the witnesses and took into account the facts and circumstances

of the case and held that the complainant failed to prove his case. It is well settled unless the First Appellate Court finds that the view taken by the Trial Court is unreasonable or perverse, it should not interfere with an order of acquittal. In the case at hand, the view taken by the First Appellate Court is permissible on the evidence of record. As the First Appellate Court has taken a reasonably possible view, I hold that the order of acquittal cannot be interfered with.

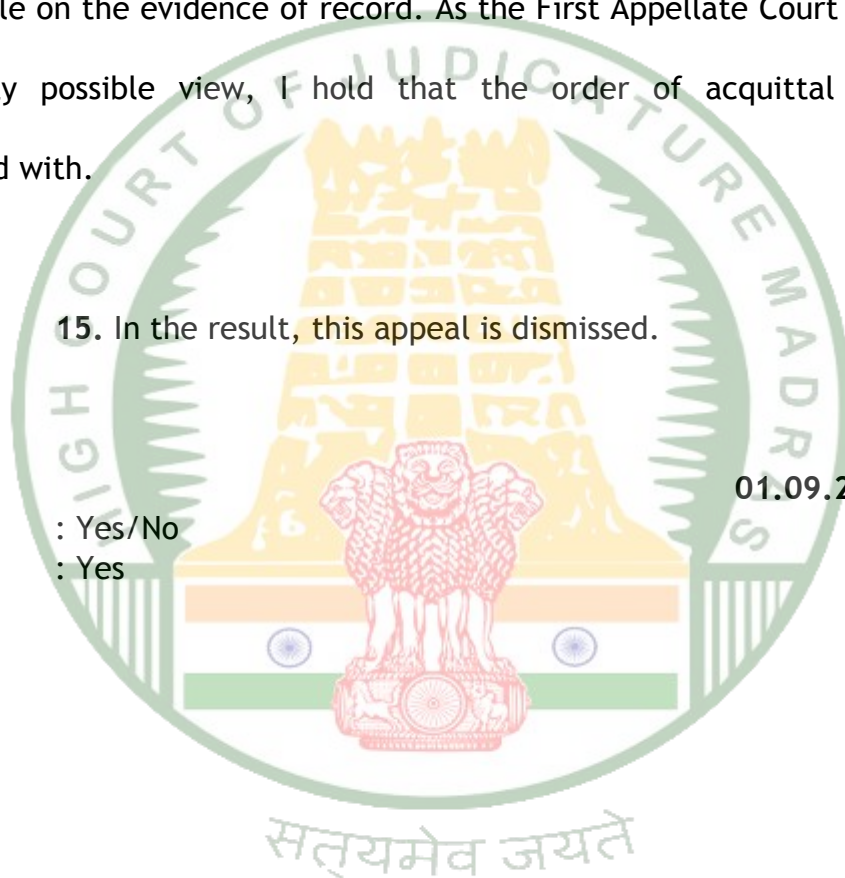
15. In the result, this appeal is dismissed.

01.09.2017

Index : Yes/No

Internet : Yes

sri



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To

- 1.The Additional District and Sessions Judge,
Krishnagiri at Hosur.
- 2.The Judicial Magistrate No.II,
Hosur.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.,

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