

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 12.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.658 of 2016

R.Ramasamy

... Appellant

versus

D.Prabakaran

... Respondent

Prayer: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, to set aside the judgment dated 18.04.2016 passed in S.T.C.No.19 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magistrate Level, Tiruchengode and allow the Criminal Appeal.

For Appellant : Mr.S.Kadarkarai

For Respondent : Mr.B.Vasudevan

J U D G M E N T

सत्यमेव जयते

The complainant in S.T.C.No.19 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court, Magistrate Level, Tiruchengode, is the appellant herein. This appeal is directed against the order of acquittal.

2. The complainant has filed the complaint for the offence under Section 138 of Negotiable Instruments Act. He has alleged in the complaint

that the respondent borrowed Rs.7,00,000/- from him on 07.09.2015 and handed over the cheque in question (dated 07.10.2015) for discharge of the said debt. The cheque when presented for encashment was dishonoured with remarks “insufficiency of fund” in the account of the respondent. Hence, the complainant sent a legal notice dated 03.11.2015 calling upon the respondent to repay the amount covered by the cheque. As there was no reply from the respondent, the complaint has been filed by the complainant. In support of his case, the complainant examined himself as P.W.1. He has marked the cheque in question [Ex.P.1], Return Memo [Ex.P.2] and a copy of the legal notice [Ex.P.3] dated 03.11.2015.

3. The respondent has taken a plea that he and his erstwhile partner, one Raja borrowed Rs.2,50,000/- each from the complainant on 25.11.2011 and handed over two signed cheques and that, the partnership was dissolved by a Dissolution Deed [Ex.D.1]. He sold his Rig and lorry for Rs.12,40,000/- on 25.08.2015 [Ex.D.2, the Lorry and Rig Sale agreement dated 25.08.2015]. He discharged the loan of Rs.2,50,000/- payable to the complainant on 02.09.2015. He asked for the return of the documents and cheques and other documents. The complainant promised to return the documents. Subsequently, the complainant by misusing one of the cheques handed over to him by the respondent filed the present complaint.

4. The Trial Court, after full trial, acquitted the accused holding that the respondent has rebutted the presumption drawn against him in terms of Section 139 of the Negotiable Instrument Act. The Trial Court has also held that the complainant failed to prove his case beyond reasonable doubt. Aggrieved by the order of acquittal, the complainant has preferred this appeal.

5. The learned counsel appearing for the appellant submitted that the Trial Court has committed an error in coming to the conclusion that the respondent rebutted the presumption without taking note of the fact that the respondent had not sent a reply to the legal notice sent by the complainant.

6. The learned counsel appearing for the respondent advanced his arguments in support of the judgment of the Trial Court. According to him, there are several materials available on record to conclude that the respondent has rebutted the presumption drawn against the accused.

7. It is not in dispute that the cheque in question belongs to the respondent and it bears his signature. Therefore, the Court is bound to presume that the cheque was issued for the discharge of legally enforceable

debt. However, the presumptions drawn under Sections 118 and 139 of Negotiable Instruments Act are rebuttable presumptions. The initial burden is on the respondent to rebut the said presumptions. It is a question of fact. It is to be seen whether the respondent has rebutted the presumptions drawn against him.

8. The respondent as D.W.1 on oath has said that he and his erstwhile partner borrowed Rs.2,50,000/- each on 25.11.2011 from the complainant and at the time of taking the loan, he has handed over two blank cheques and the other documents and the said loan was discharged on 02.09.2015. He further deposed that after the discharge of the said loan, he asked for the return of the documents and the complainant promised to return the documents. It is also the evidence of the respondent that the partnership was dissolved on 30.11.2012 as per Ex.D.1 and he has sold the Lorry and Rig in pursuance of Sale agreement [Ex.D.2] dated 25.08.2015. A perusal of Ex.D.2 would show that a Lorry and Rig was agreed to be sold for a sum of Rs.12,40,000/- by Prabhakaran/respondent.

9. The definite case of the complainant is that the accused borrowed Rs.7,00,000/- as hand loan. It is to be borne in mind that in order to rebut the presumption under Section 138 of the said Act, it is open to the

respondent to rely on the materials placed by the complainant also and he can discharge his onus on the basis of preponderance of probabilities, simply because the respondent failed to send reply to the notice sent by the complainant, his defence cannot be rejected. It is significant to note that according to the complainant, he lent Rs.7,00,000/- without any agreement for payment of interest. According to the complainant, the loan was paid on 07.09.2015. The cheque was dated 07.10.2015. The Cheque is also for Rs.7,00,000/-. The complainant did not charge any interest.

10. The complainant in his evidence has stated that he is an Income Tax Assessee and he is ready to produce his Income Tax Returns. However, he has not chosen to produce his Income Tax Returns to show that he has in fact paid Rs.7,00,000/- to the complainant. In **KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]**, the Hon'ble Supreme Court has held as follows:

"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."

11. The above mentioned circumstances, in my considered view, are sufficient to hold that the respondent has rebutted the presumptions drawn against him.

12. As the respondent has discharged his onus, the burden shifts on to the complainant and it is for him to prove that he has actually lent Rs.7,00,000/- to the respondent and for the discharge of the said loan, the respondent issued the cheque in question. Except the interested oral testimony of P.W.1, there is no other contemporaneous document to show that the complainant actually lent Rs.7,00,000/- to the respondent. He has not chosen to produce his Income Tax Returns. Therefore, adverse inference has to be drawn against him. In the absence of any other witness and contemporaneous document it can be safely concluded that the complainant has failed to prove his case.

13. This Appeal is against an order of acquittal. It is well settled if two reasonable conclusions can be reached on the basis of the evidence on record, the Appellate Court should not disturb the finding of the Trial Court. Having considering the findings delivered by the Trial Court, I am of the view that the Trial Court was justified in acquitting the accused.

14. For the above reasons, the Criminal Appeal is liable to be dismissed. Accordingly, it is dismissed. The judgment of acquittal dated 18.04.2016 passed by the learned Judicial Magistrate, Fast Track Court, Magistrate Level, Tiruchengode, in S.T.C.No.19 of 2016 is hereby confirmed.

12.09.2017

Index : Yes/No

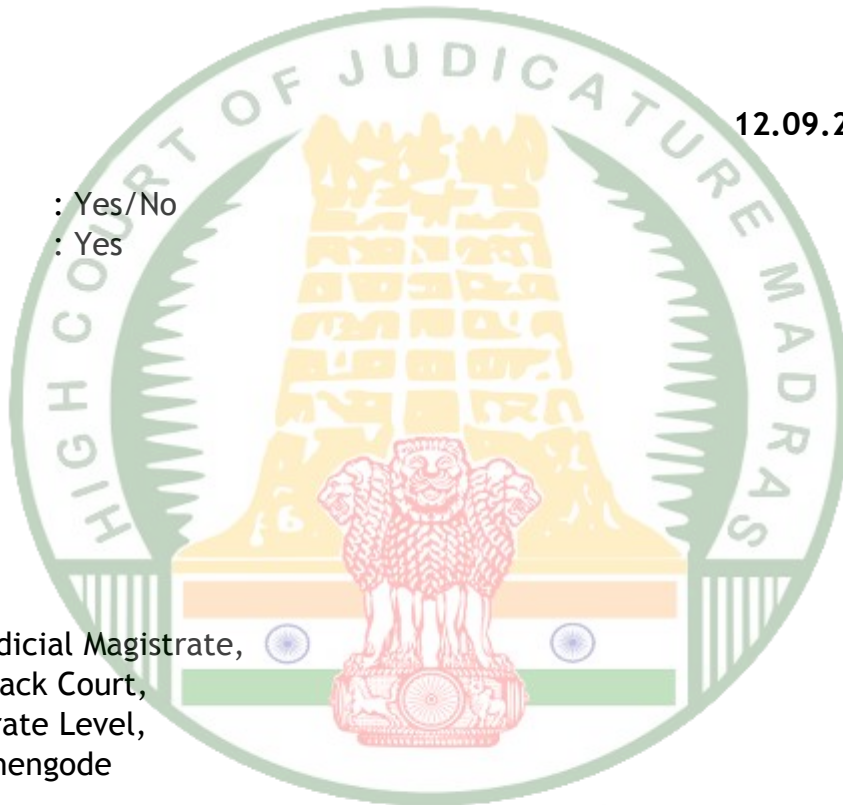
Internet : Yes

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To

1. The Judicial Magistrate,
Fast Track Court,
Magistrate Level,
Thiruchengode

2. The Public Prosecutor,
High Court of Madras,
Chennai.



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N.AUTHINATHAN, J.

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