

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

CRIMINAL APPEAL NOS.67 AND 69 OF 2016

S.Parvatham

... Appellant
[in both CrI.As.]

versus

S.Renuka

... Respondent
[in both CrI.As.]

Common Prayer: Criminal Appeals filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 17.11.2015 made in C.C.Nos.56 of 2007 and 185 of 2006, on the file of the learned Judicial Magistrate No.I, Erode.

For Appellant : Mr.M.Guruprasad
[in both CrI.As.]

For Respondent : M/s.Sarvabhauman Associates
[in both CrI.As.]

COMMON JUDGMENT

As the parties in both the appeals are the same and common questions of fact and law arise between the same parties in these two appeals, with the consent of the learned counsel for the parties, these appeals were heard together and are being disposed of by this common judgment.

2. These appeals are directed against the order of acquittal in C.C.Nos.56 of 2007 and 185 of 2006, on the file of the learned Judicial Magistrate No.I, Erode. The appellant has filed two complaints. C.C.No.56 of 2007 relates to dishonour of the Cheque bearing No.227827 dated 27.10.2005 for Rs.5,00,000/-. C.C.No.185 of 2006 relates to dishonour of the Cheque bearing No.227828 dated 03.01.2006 for Rs.5,00,000/-.

3. The case of the complainant is as follows:-

[i] On 20.10.2005, the respondent herein took a loan of Rs.5,00,000/- from the complainant promising to repay the same within a week with interest at the rate of 24% and issued a post-dated cheque dated 27.10.2015 for Rs.5,00,000/- and paid Rs.2,335/- towards interest for seven days. Subsequently, on 03.01.2006, the respondent took a loan of Rs.5,00,000/- from the complainant promising to repay the same within 70 days with interest at the rate of 24% and issued a post-dated cheque dated 03.01.2006 for Rs.5,00,000/- and paid Rs.23,335/- towards interest for 70 days. Those cheques were dishonoured when presented for collection through Indian Bank due to "funds insufficient" in the account of the respondent. The Complainant issued legal notice dated 02.02.2006 calling upon the respondent to pay the cheque amount. As the respondent failed to make payment, she has preferred the complaints.

[ii] The respondent has denied that she borrowed Rs.10,00,000/- from the complainant. According to her, the cheques in question were not issued for discharge of any debt. Her case is that she entered into a sale agreement with the complainant and two cheques including the cheques in question were handed over to her as security for the due performance of the contract. It is her further case that as per the agreement, she has purchased the property from the complainant on 05.10.2005. Ex.D.3 is the copy of the sale deed.

[iii] At the time of sale, the complainant informed that she had lost the two cheques and promised that she would not misuse those cheques [one cheque dated 27.10.2005 for Rs.5,00,000/- and another cheque dated 03.01.2006 for Rs.5,00,000/-] and to that effect, she issued a receipt [Ex.D.4.]. On the same date, the respondent and three others were entered into an agreement [Ex.D.5] with Sivasubramaniam, husband of the complainant and paid Rs.13,87,000/- in cash and Rs.10,00,000/- by means of two cheques, each for Rs.5,00,000/-. These two cheques were encashed by the husband of the complainant. In view of the undertaking [Ex.D.4] given by the complainant, the respondent instructed her Bank by means of letter [Ex.D.9] to stop payment for the said two cheques. As the husband of the complainant has not come forward to perform his part of contract under Ex.D.5, the suit has been filed in O.S.No.193 of 2006 on the file of the Principle District Court, Erode. Ex.D.8 is the decree copy. Thereafter, instead of returning the said two cheques, the complainant misused those cheques and filed two complaints, namely, C.C.Nos.56 of 2007 and C.C.No.185 of 2006.

[iv] The complainant examined herself as D.W.1 and examined Arunkumar [D.W.3], who is an attester to the receipt [Ex.D.4]. She has also examined the Bank Manager, Corporation

Bank [D.W.2] to show that payment of Rs.10,00,000/- made to the husband of the complainant by means of two cheques. The Trial Court on an analysis of the evidence available on record held that the complainant had failed to establish her 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 appeals after obtaining leave.

4. The learned counsel appearing for the appellant would submit that the Trial Court ignored the fact that the respondent did not send any reply to the legal notice sent by the complainant and that, the Trial Court failed to note that Ex.D.4 receipt is a false document and the Trial Court has committed error in placing reliance on Ex.D.4 receipt. According to him, the evidence was not properly appreciated by the Trial Court.

5. The learned counsel appearing for the respondent would submit that the Trial Court has appraised the evidence carefully and the judgment does not warrant any interference.

6. Admittedly, the complainant received two cheques from the respondent. She has filed C.C.Nos.56 of 2007 and 185 of 2006 on the file of the same Court in respect of Ex.P.1 cheques. The respondent did not dispute that the cheques [Ex.P.1] belongs to her and it bears her signature. Therefore, in terms of Section 139 of the Negotiable Instruments Act, the respondent can be presumed to have issued the cheques for the discharge of a legally enforceable debt. However, the said presumption is rebuttable vide RANGAPPA vs. SRI MOHAN [(2010) 11 SCC 441]. Therefore, the onus lies on the respondent to show that the real fact is not as presumed.

7. 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". The respondent in order to rebut the presumption has adduced evidence. The definite case of the respondent is that, he has handed over two cheques to the complainant as security for the due performance of the agreement to purchase the property from the complainant. Ex.D.3 is the sale deed dated 05.10.2005 executed by the complainant. Arun Kumar [D.W.3] is one of the Attestors to the sale deed. Ex.D.4 is the receipt said to have been executed by the complainant. The genuineness of Ex.D.4 was disputed by the complainant. However, the execution of this document has been proved by evidence of D.W.3. The sale deed and Ex.D.4 receipt were executed on the same date i.e. 05.10.2005. D.W.3 testified that the complainant signed Ex.D.4 in his presence. The Trial Court accepted the evidence of

D.W.3. The Trial Court compared the disputed signature in Ex.D.4 with the admitted signatures of the complainant and thereafter, recorded a finding that the cheques in question were given as security. The evidence adduced on the side of the respondent would show that the real fact is not as presumed in terms of Section 139 of the Negotiable Instruments Act. The evidence adduced by the respondent satisfied the test of preponderance of probabilities to rebut the said statutory presumption.

8. Once the presumption is rebutted, the onus shifted to the complainant and it is for her to prove that the cheques were issued towards legally enforceable liability. It is significant to note that the complainant alleged that the respondent agreed to repay Rs.5,00,000/- with 24% interest. However, she has not produced any acceptable material to show that the respondent agreed to pay interest. Except the disputed document, namely, the cheques Ex.P.1 there is no reliable evidence to show that the complainant has lent Rs.10,00,000/- to the respondent. The mere oral evidence of D.W.1 is not sufficient to hold that she had lent money to the respondent. The complainant has not been able to show any material to indicate that he has got so much money on the relevant dates to lend as claimed by her. 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 complainant has not proved that the cheques in question were issued for the discharge of legally enforceable debt. The appellant has not proved his case for an offence under Section 138 of the Negotiable Instruments Act. The view taken by the Trial Court is permissible on the evidence on record. The appreciation of evidence by the Trial Court is not perverse.

9. The Hon'ble Supreme Court in MURALIDHAR @ GIDDA AND ANOTHER vs. STATE OF KARNATAKA [2014 (5) SCC 730], has held that "if the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified." In view of the dictum laid down by the Supreme Court and for the reasons stated above, I am of the

considered view that there is no ground to interfere with the judgment of acquittal.

10. In the result, these appeals are dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

sri
To
Sub Assistant Registrar

1. The Judicial Magistrate No.I,
Erode.
2. -do- Thro The Chief Judicial Magistrate,
Erode.

+2cc to Mr.M.Guruprasad, Advocate,
S.R.No.54794 & 54796
+2cc to M/s.Sarvabhauman Associates, Advocate,
S.R.No.54230 & 54231

Criminal Appeal Nos.67 and 69 of 2016

PA(CO)
CS/18/08/17

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