IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.866 of 2008

G.Narayanan ... Appellant

vs.

Mrs.R.Kavitha ... Respondent

Criminal Appeal preferred under Section 378 Cr.P.C., against the order of acquittal dated 12.11.2008 passed by the learned III Additional Sessions Judge, Chennai in Crl.A.No.223 of 2008 against the order and judgment of conviction dated 24.07.2008 passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.4441 of 2006.

For Appellant : M/s.Kumar and Baskar

For Respondent : Mrs.Roselet Helan
Legal Aid Counsel.

JUDGMENT

This appeal has been filed against the order of acquittal. The appellant/complainant has filed a private complaint against the respondent/accused for the offence under Section 138 of Negotiable

Instrument Act, in C.C.No.4441 of 2006, on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai. The trial Court, after trial, convicted the respondent/accused and sentenced her to undergo one year simple imprisonment and to pay a fine of Rs.500/- in default, to undergo simple imprisonment for three months. Challenging the above said order of conviction, the respondent/accused filed an appeal in Crl.A.No.223 of 2008, on the file of the learned III Additional Sessions Judge, Chennai. The Lower Appellate Court acquitted the accused. Now, challenging the above said order of acquittal, the present appeal has been filed by the complainant.

2. The case of the prosecution, in brief, is as follows:-

In the year,2005, the respondent/accused borrowed a sum of Rs.70,000/- from the appellant/complainant for business purpose. In order to discharge the above said amount, the respondent/accused issued a cheque dated 10.03.2006, drawn in UCO Bank, T.Nagar Branch. When the above cheque was placed before the drawee bank on 15.04.2006, the cheque was returned on the ground of insufficient fund. Then, the appellant/complainant issued a legal notice to the respondent/accused, and after complying all the legal formalities, he has filed a complaint before the Metropolitan Magistrate Court. The learned Metropolitan

Magistrate had taken cognizance and issued process to the respondent.

3. In order to prove its case, the appellant/complainant examined himself as P.W.1 and also marked 9 documents. The trial Court, considering the above materials, framed charge against the accused/respondent and the accused denied the same. According to P.W.1, he has engaged finance business and the respondent/accused borrowed a sum of Rs.70,000/- from him for business purpose and in order to discharge the above said amount, the respondent/accused issued a cheque dated 10.03.2006, drawn in UCO Bank, T.Nagar Branch, when the above cheque was placed before the drawee bank on 15.04.2006, the said cheque was returned on the ground "insufficient fund". Then, he filed a complaint before the Metropolitan Magistrate Court against the respondent/accused for the offence under Section 138 of Negotiable Instrument Act.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false and she has examined four witnesses on her side and marked 18 documents. The case of the respondent/accused is that she did not receive any money from the complainant, but there was a finance

transaction between the husband of the respondent one Radhakrishnan, one Ramachandraphet and Louies, the complainant was acted as a broker of the above said two persons and through him her husband borrowed money, at that time she gave blank cheque and some signed blank papers to the complainant. Then, the said loan has been repaid thereafter her husband sent a letter to the complainant asking him to return the cheque and singed blank papers, the letter has been marked as Ex.D4 and the postal cover is marked as Ex.D13. But, using the above said cheque, the present complaint has been filed, there is no legally enforceable liability. The accused examined her as D.W.4, apart from that she has also examined the Bank Manager as D.W.3, and he has stated that the account of the respondent/accused was closed on 30.03.2005 itself.

5. The trial Court, after considering the material available on record, convicted the accused, but the lower appellate Court, allowed the appeal filed by the respondent/accused and acquitted the respondent/accused on the ground that the respondent has raised the probable defence that there was a prior transaction between the husband of the respondent and the complainant, at that time a cheque has been given by the respondent/accused, using the said cheque, the present complaint has been filed by the complainant, she has raised probable defence and rebutted the

initial presumption, but absolutely there is no material available on the side of the complainant that there is a legally enforceable liability. Now, challenging the the above said order of acquittal, the present appeal has been filed.

6. Heard the learned counsel appearing for the petitioner and also the learned counsel appearing for the respondent and perused the materials available on record.

7. It is true that the complainant admitted the signature found in the cheque. But, the defence was that there was a business transaction between one Ramachandrabhet, who was examined as D.W.2, and one Louies, the complainant only as acted as a broker, through him, the transaction has taken place in the year, 2002 itself. At that time, the respondent/accused gave blank cheque and blank signed papers to the complainant. After discharging the said loan amount, the husband of the respondent sent a letter to the complainant, which was marked as Ex.D4 on 13.02.2004 asking him to return the cheque and the postal cover was marked as Ex.D13, and the postal receipt has also marked as Ex.D12. Apart from that the complainant himself has marked the alleged letter sent by the accused dated 17.09.2002 addressed to one Louis which was marked as Ex.P6. Even in the letter, the husband of the respondent

asking the complainant to return back the promissory note and other documents. From the above, it is clear that even in the year,2002 there was a dispute between the parties and it is also proved the that the said cheque has been given in the year,2002 to the complainant by the respondent. The signed cheque and signed blank papers were in the custody of the complainant. It is the specific case of the respondent/accused is that they never borrowed any amount from the complainant and there is no legally enforceable debt and there is no transaction with the appellant/ complainant. The lower appellate court, considering all the materials available on record, rightly acquitted the accused on the ground that there is no evidence to prove the charge against the respondent/accused.

8. Even though the signature found in the cheque was admitted by the respondent/accused, It is a settled law that the initial presumption under Section 139 of the Negotiable Instrument Act can be raised by a probable defence, which creates a doubt regarding the existence of a legally enforceable liability. In the instant case, the respondent/accused raised the initial burden and it is for the appellant/complainant prove his case. Except the evidence of P.W.1, there is no other evidence available to show that the respondent/accused borrowed the amount from the appellant

and only in order to discharge the amount the cheque has been issued. There is no evidence available to prove that there is a legally enforceable debt. The lower appellate Court considering the entire materials, has rightly come to the conclusion that the appellant failed to prove the case beyond reasonable doubt and thereby acquitted the accused. I do not find any illegality or irregularity in the order passed by the lower appellate Court and the appeal fails and the same is dismissed.

9. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 09.09.2006 passed in Crl.A.No.223 of 2008 on the file of the learned III Additional Sessions Judge, Chennai is hereby confirmed.

07.10.2017

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To

The III Additional Sessions Judge,
City Civil and Sessions Court,
Chennai

V.BHARATHIDASAN.J.,

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