IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.919 of 2007

V.Ganesh ... Appellant

vs.

R.Selvaraj ... Respondent

Criminal Appeal preferred under Section 378 Cr.P.C., against the judgment of acquittal dated 17.08.2007 in C.C.No.5 of 2006 on the file of the Judicial Magistrate No.I, Coimbatore.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.S.Gunalan

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.5 of 2006, on the file of the learned Judicial Magistrate No.I, Coimbatore. The trial Court, after trial, acquitted the respondent/accused. Now, challenging the above said order of acquittal, the present appeal has been filed by the complainant.

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

The respondent/accused borrowed a sum of Rs.3,00,000/- from the appellant/complainant on various dates between July,2004 and December 2004 for business purpose. He also agreed to repay the same with 18% interest per annum. In order to discharge the above said amount, the respondent/accused issued a cheque dated 12.07.2005, bearing No.960919, drawn on Union Bank of India, R.S.Puram Branch, Coimbatore. When the above cheque was presented before the drawee bank on 04.08.2005 for collection, the cheque was dishonoured with an endorsement "account closed on advice". Then, the appellant/complainant issued a legal notice to the respondent/accused directing him to repay the amount. But, the accused failed to repay and thereafter, after complying all the legal formalities, he has filed a complaint. The learned Judicial 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 6 documents, namely, returned cheque Ex.P1, returned memo Ex.P2, Intimation letter sent by the Bank Ex.P3, legal notice Ex.P4, acknowledgement card Ex.P5, and reply notice Ex.P6. The trial Court, considering the above materials, framed charge against the accused/respondent and the accused denied the same. According to P.W.1, the respondent/accused borrowed a sum of Rs.3,00,000/- from the appellant/complainant on various dates for business purpose. He also agreed to repay the same with 18% interest per annum. In order to discharge the above said amount, the respondent/accused issued a cheque dated 12.07.2005, bearing No.960919, drawn on Union Bank of India, R.S.Puram Branch, Coimbatore. When the above cheque was presented before the drawee bank on 04.08.2005, the cheque was dishonoured with an endorsement "account closed on advice". Then, the appellant/complainant issued a legal notice to the respondent/accused directing the respondent/accused to repay the amount. Then, after following the legal formalities, he filed a private complaint before the 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., he denied the same as false and he examined himself as D.W.1 and exhibited two documents. According to the respondent/accused, from July,2004 to December,2004, he borrowed a sum of Rs.1,00,000/- from one Radhakrishnan of Velandipalayam, at the time of borrowel, he issued the disputed cheque as security and thereafter, he discharged the said loan amount. But, the said Radhakrishnan did not return the cheque. In the above circumstances, on 28.11.2000, he issued a legal notice to the said Radhakrishnan asking him to return the cheque. But, he did not return the cheque. Wherein the disputed cheque number has also been mentioned in the notice. The said notice was marked as Ex.D1 and acknowledgement card was marked as Ex.D2. Now, using the said cheque, the present complaint has been filed and he has not borrowed any amount from the appellant/complainant. Considering the above materials, the trial Court acquitted the accused on the ground that the accused has raised a probable defence stating that the disputed cheque has been issued to one Radhakrishnan in the year,1995 itself and to establish the same, the respondent/accused marked the copy of the legal notice

[Ex.D1], acknowledgement card[Ex.D2]. Apart from that except the cheque, there is no evidence available to show that the respondent/accused borrowed the said amount from the appellant/complainant and acquitted the accused. Now, challenging the the above said order of acquittal, the present appeal has been filed.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

6. The case of the complainant is that the accused borrowed a sum of Rs.3,00,000/- from the appellant/complainant between July,2004 and December,2004 and in order to discharge the above said liability, he issued a cheque dated 12.07.2005, bearing No.960919, drawn on Union Bank of India, R.S.Puram Branch, Coimbatore. When the above cheque was presented before the drawee bank on 04.08.2005 for collection, the cheque was dishonoured with an endorsement "ccount closed on advice".

7. The respondent/accused specific plea that the disputed cheque has been issued to one Radhakrishnan in the year 1995, for the amount borrowed by him and after the discharge of the above said loan amount, the said Radhakrishnan failed to return the cheque. Hence, he has issued a legal notice dated 28.11.2000 itself, wherein, the cheque number was specifically mentioned. In order to prove the same, the respondent/accused has marked legal notice[Ex.D1] and postal receipt[Ex.D2], with the above materials, the respondent has raised a probable defence that he has not borrowed any amount from the complainant and cheque was not issued to discharge any liability.

8. 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 doubt regarding the existence of a legally enforceable debt. Once the initial burden is raised by the accused, it is for the complainant to prove that there is a legally enforceable liability. In the instant 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 loan amount the cheque has been issued and there is no evidence available to prove that there is a legally enforceable debt. The Court below 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 trial Court, hence the appeal fails and the same is liable to be dismissed.

9. In the result, the Criminal Appeal is dismissed. The judgment dated 17.08.2007 passed in C.C.No.5 of 2006 on the file of the learned Judicial Magistrate No.I, Coimbatore is hereby confirmed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rrg
To
1.The Judicial Magistrate No.I
Coimbatore.

2.The Section Officer,
Criminal Section,
High Court, chennai-104.

+1 CC TO MR.S.Gunalan, Advocate SR. No.79151

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KS(CO)
RMP(28/03/2018)