IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.10.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.942 of 2007

K.Sathish Kumar Reddy
... Petitioner

-Versus-

P.Rajaram
... Respondent

Revision Case filed under Sections 378 of Cr.P.C. praying to call for the entire records relating to the case in C.C.No.1279 of 2005 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, and set aside the order dated 25.07.2017 passed thereunder acquitting the accused.

For Petitioner : Mr.R.Kannan

For Respondent : Ms.S.Annnakodi

ORDER

Challenging the order of acquittal the present appeal has been filed by the complainant.

2. The petitioner filed a private complaint in C.C.No.1279 of 2005 before the learned XVII Metropolitan Magistrate, Saidapet, Chennai, alleging that the respondent had committed an offence punishable under Section 138 of The Negotiable Instruments Act. The learned Magistrate by judgement dated 25.07.2007 acquitted the accused. Challenging the same, the complainant is before this court with this criminal appeal.

3. The case of the complainant in brief is as follows: The accused borrowed a sum of Rs.6,00,000/- from the complainant for his family expenses and in order to discharge his liability, the accused had given a cheque dated 01.12.2004 drawn on Vijaya Bank, Saidapet Branch, for Rs.6,00,000/-. According to the complainant, when the above cheque was presented for realization of the accused bank, the same came to be returned for the reason "account closed". Hence, the complainant issued a legal notice

to the accused demanding payment of cheque amount, for which, the respondent issued a reply denying his liability and stating that he never borrowed Rs.6,00,000/- as alleged by the complaint and earlier he had borrowed only a sum of Rs.25,000/- which was also discharged by him. In the reply it was specifically stated that the disputed cheque was handed over by him to the complainant in the year 1998 only to arrange for financial assistance which the complainant misused against the respondent. In the reply it was further stated that the disputed cheque was never intended to be used for realizing any amount. Since the respondent did not comply with the statutory notice, a private complainant was filed by the complainant before the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

4. Before the trial court on the side of the complainant, he himself was examined as P.W.1 and 6 documents were exhibited. P.W.1 has spoken to the fact that the respondent approached him for loan of Rs.6,00,000/- in order to meet his family expenses and he advanced a sum of Rs.6,00,000/- to the respondent and the same having been lent, the respondent in discharge of his liability issued the cheque in question. When the said cheque was presented for encashment, the same was returned by the bank with an endorsement "account closed" on 02.12.2014. He has further spoken to about all the other subsequent facts including the issuance of statutory notice. On the side of the respondent, he examined the Bank Manager of Vijaya Bank, Saidapet Branch, as R.W.1. However, no document was marked on his side. R.W.1 has spoken to about the fact that the respondent was operating savings bank account in their branch and that the cheque book containing the cheque in question was issued as early as on 20.12.1997 and the savings bank account in the name of the respondent was closed by the respondent as early as on 23.12.1999.

5. The respondent contended before the trial court that originally he borrowed a sum of Rs.25,000/- from the appellant and he had subsequently discharged the same. He further contended that he never borrowed Rs.6,00,000/- from the appellant and that the cheque in question was never intended to be for realizing any amount. The appellant was known to him and that a blank signed cheque was obtained by the appellant stating that he would arrange for financial assistance for his business. But, the appellant could not arrange for financial assistance. As he reposed trust and confidence in the appellant, he did not press for the return of the cheque and subsequently he forgot to get back the same. The appellant, however, taking advantage of the same, misused the cheque in question to extract more money from him.

6. Having considered the rival contentions, the trial court accepted the probable defence taken by the respondent and acquitted him from the charges. Aggrieved over the same, the complainant is now before this Court with this appeal.

7. The learned counsel for the appellant would contend that once respondent admitted his signature on the cheque, it was not open for him to urge that although the cheque had been dishonoured, no offence under the Act is made out. Once the respondent admitted his signature on the cheque in question, there arises a presumption under Section 139 of The Negotiable Instruments Act that the cheque was issued in discharge of his liability and it was for the respondent to rebut the presumption raised against him that the cheque was not at all issued for any legally enforceable debt. However, the trial court, without properly considering the facts and circumstances of the case and the legal position in this regard, erroneously shifted the burden upon the complaint and held he failed to establish the date when and the place where he advanced loan to the respondent and acquitted the respondent from the charges which is not legally sustainable. He, therefore, prays for setting aside the order of acquittal and to convict the respondent for offence under Section 138 of the Act.

8. Per contra, the learned counsel for the respondent submitted that even though the respondent admitted his signature in the cheque in question, accepting the probable defence set up by the respondent, the trial court rightly acquitted him from the charges and that the same does not require any interference at the hands of this court.

9. I have considered the rival submissions carefully.

10. In this case, admittedly, the respondent admitted that the cheque in question has been signed by him. Hence, the initial presumption was against the respondent. Of course, it is a rebuttable presumption. The accused can rebut the presumption by raising a probable defence.

11. According to respondent, the cheque was never intended to be issued for realizing any money and it was given to the appellant long ago for arranging financial assistance which was subsequently misused by the appellant. The appellant in his cross examination admitted that the respondent had earlier obtained a loan of Rs.25,000/- and subsequently, he had discharged the same by way of demand draft.

12. In the complaint, the appellant had not at all stated the date when and where the loan was advanced and the manner in

which it was advanced, i.e, whether in cash or through cheque. He has also not produced any other records, like savings bank account statement and income tax return, etc., to show that he actually advanced a sum of Rs.6,00,000/- to the respondent on the request made by the respondent and the loan transaction and also to prove fact that he was having sufficient sources of income.

13. The trial court while examining the probable defence of the respondent and having regard to the admission of the fact that the respondent had earlier obtained loan of Rs.25,000/- and the same was discharged by him subsequently by way of demand draft, rightly shifted the burden upon the appellant to prove that the respondent was really indebted to him and that the cheque in question was handed over to him by the respondent only to discharge a legally subsisting debt. The learned Magistrate has given cogent and convincing findings for having accepted the probable defence raised by the respondent in preference to the case of the appellant and hence shifted the burden on the appellant to prove existence of legally recoverable debt. The complaint is bereft of particulars, such as, the date when and the place where the loan was advanced and the mode of payment. As rightly held by the learned Magistrate, the appellant did not produce any oral or documentary evidence to prove his sources of income and the loan transaction. When the respondent is able to rebut the presumption by raising probable defence, the burden is again shifted on the appellant to prove the existence of legally recoverable debt, which he failed to discharge. The learned Magistrate was right in holding that the appellant has failed to discharge his burden to prove that the cheque in question was issued by the respondent in discharge of any legally recoverable debt. Therefore, I do not find any infirmity in the judgement of acquittal recorded by the learned Magistrate warranting interference in the appellate jurisdiction. The appeal lacks merit and the same deserves to be dismissed.

14. In the result, this criminal appeal is dismissed and the order of acquittal dated 25.07.2017 made by learned XVII Metropolitan Magistrate, Saidapet, Chennai, in C.C.No.1279 of 2005 stands confirmed.

Kmk

/sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The XVII Metropolitan Magistrate,
Saidapet, Chennai,

2. Do Through Chief Metropolitan Magistrate,
Egmore, Chennai-8.

+1 CC to Mr.R.Vijayaragaven , Advocate Sr.No. 75574

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MG (CO)
MLT 21/11/2017