

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.1453 of 2003

Sekar

.. Appellant /Complainant

Vs

Ramilasree

Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 05.02.2003 in C.C.No.174 of 1999 on the file of XIV Metropolitan Magistrate, Egmore, Chennai.

For Appellant : Mr.R.Hariharan

JUDGEMENT

Challenging the order of acquittal passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai, in C.C.No.174/1999 dated 05.02.2003, the present appeal has been filed. The appellant herein filed a private complaint, for an offence under Section 138 of Negotiable Act, against the respondent herein, on the ground that the respondent borrowed a sum of Rs.5,00,000/- and in order to discharge the above loan, he has issued a cheque dated 11.09.1998 and when he placed the cheque for encashment on 14.09.1998, the same was returned on 16.09.1998 on the ground of exceeding the agreement. Subsequently, on 17.09.1998, he issued a notice to the respondent, for which, the respondent issued a reply on 07.10.1998. Thereafter, he has filed the present complaint, which was also taken cognizance by the learned IV Metropolitan Magistrate, Chennai in C.C.No.174 of 1999.

2. In order to prove the case, the appellant examined himself as PW.1 and also examined the Bank Manager as P.W.2 and marked 7 documents.

3. The respondent contested the complaint stating that he is running a poultry farm and for that purpose, he received a sum of Rs.5,00,000/-. He has issued a cheque to the appellant for security purpose. Subsequently, he has also discharged the amount by executing a sale deed by one of his partner Damodharan, in the poultry business. The said Damodharan was examined as DW.1. Thereafter, the appellant threatened the

respondent to pay the amount. Hence, he has lodged a complaint before the respondent police and the same was received in C.S.R.No.280 of 1998 and after enquiry, the said petition was closed directing the parties to approach the civil court. In order to prove the same, he examined one Ramamoorthy, Sub-Inspector of Police, as DW2 and the complaint was also marked as Ex.D8.

4. Considering the above material, the court below came to a conclusion that since the respondent accepted the signature in the said cheque, there is a presumption in his favour and in order to rebut the presumption, he has examined DW.2, Sub-Inspector of Police that on 12.09.1998, the respondent has filed a complaint before the Kilpauk Police Station against the appellant herein and subsequently, the above complaint was closed after enquiring the parties with the direction to approach the civil court. Hence, the respondent has rebutted the presumption lies on his head and it is the duty of the appellant/complainant to prove that the respondent received the amount and for discharging the liability the cheque has been given. But there is no evidence available on record to prove the same. Hence, the court-below acquitted the accused.

5. I have heard Mr.R.Hariharan, learned counsel appearing for the appellant and also perused the materials available on record, carefully.

6. Though notice was served on the respondent, when the respondent was called none appeared before this Court either in person or through the counsel and hence, this Court is left with no option but to pass orders hearing the learned counsel appearing for the petitioner and having regard to the materials placed on record.

7. On perusal of the records, it could be seen that even though the respondent/accused has admitted the signature in the cheque, there is a presumption on the respondent under Section 139 of Negotiable Instrument Act and the respondent to rebut the presumption examined the witnesses DW1 & DW2, to prove the fact that there was a compromise prior to the date of cheque and in which, the parties were directed to approach the civil court and a sale deed was also executed in his favour with the above materials the accused raised the initial presumption created on him under Section 139 of the Negotiable Instrument Act. In the above circumstances, the burden is on the appellant to prove that the petitioner has received the amount as a loan and for that purpose the disputed cheque has been issued. But that there is no evidence available on record to prove the same. Considering all the materials, the trial court rightly held that the appellant has failed to prove the case and acquitted the accused.

8. In the above circumstances, I find no illegality or irregularity or perversity in the order passed by the court below and no merit in the appeal and hence, the appeal deserves to be dismissed.

9. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the Court-below in C.C.No.174 of 1999 dated 05.02.2003 is hereby confirmed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

mrp

To

1. The XIV Metropolitan Magistrate,
Egmore, Chennai -8.
2. Do Thro The Chief Metropolitan Magistrate
George Town
Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Section officer
Criminal Section, High Court, Madras.

+1 CC to Ms. Usha Raman, advocate sr 6329.

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SP(08/12/2017)

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