

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2017

PRONOUNCED ON:17.11.2017

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

CrI.A.No.1726 of 2002

V.G.Krishnamurthy

Appellant

Vs.

S.Venkataswamy

Respondent

(Amended as per the order of this Court made in M.P.No.1 of 2015 in CrI.A.No.1726 of 2002, dated 15.04.2015)

Prayer : Criminal Appeal filed under Section 378 Cr.P.C., to set aside the Judgment of acquittal passed in C.C.No.8067 of 2000, dated 28.08.2002 by the learned IX Metropolitan Magistrate, Saidapet, Chennai.

For Appellant : Mr.A.Nagarajan

For Respondent : Mr.S.Annamalai

JUDGMENT

This Criminal Appeal is against the acquittal of the accused for the offence under Section 138 of Negotiable Instruments Act by the IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.8067 of 2000, dated 28.08.2002.

2. The case of the appellant / complainant is that on 05.05.1997 the accused took a loan of Rs.3,00,000/- from the complainant agreeing to repay the same with interest at 18% p.a., and executed a promissory note. When the complainant demanded to repay the loan amount, the accused issued two cheques, dated 31.01.2000 and 02.02.2000 for Rs.30,000/- and Rs.1,00,000/- respectively. When the cheques were presented on 02.02.2000, the same were returned on 03.02.2000 with an endorsement "Insufficient Funds". The complainant issued legal notice on 07.02.2000 to the accused claiming the cheque amount and the same was received by the accused on 09.02.2000. The accused had not made any payment within 15 days but sent a reply with a concocted story. Therefore, the complainant has preferred the complaint. On appearance of the accused after furnishing

copies, he was questioned as to the alleged offence and he pleaded not guilty and therefore he was put on trial.

3. On the side of the complainant, three witnesses were examined and 11 Exhibits marked. With respect to incriminating evidence the accused was questioned under Section 313 (1) (b) Cr.P.C and he denied the same. On the side of the accused two witnesses were examined and 9 Exhibits marked.

4. The trial Court after analysing the evidence of both sides acquitted the accused. Aggrieved by the same, the complainant as appellant preferred this Criminal Appeal.

5. The learned counsel appearing for the appellant argued that there are acceptable evidence on the side of the complainant to establish that there was existing liability and the cheque was issued only for the loan obtained by the accused from the complainant. It is further contended that the trial Court is not correct in holding that Ex.D.1 to Ex.D.5 relate to a different transaction and not towards the transaction relating to the cheques in this case.

6. The learned counsel appearing for the respondent / accused argued that subsequent to the date of alleged loan pertaining to this case, only meager amount was due to the complainant from the accused and there is absolutely no existing liability for issuance of the cheques in question as alleged by the complainant. The trial Court after analysing the evidence has rightly acquitted the accused and the same does not warrant any interference.

7. The consistent case of the appellant / complainant is that the accused on 05.05.1997 took a loan of Rs.3,00,000/- from the complainant and executed a pro-note. When demanded repayment the accused issued two cheques, one for Rs.30,000/- and another for Rs.1,00,000/- on 31.01.2000 and 02.02.2000 towards part payment of the said loan. Ex.D.1 to Ex.D.5 are death knell to the case of the complainant. During cross-examination of the complainant as P.W.1, Ex.D.1 to Ex.D.5 have been marked on the side of the accused. P.W.1 admits that 'SVT' mentioned in the above Exhibits denotes the accused. He further says that in Ex.D.2 he has mentioned the due as Rs.39,000/- and interest as Rs.11,000/-. Below that he wrote Rs.1,00,000/- and "formalities two pro-notes and two cheques" He also admits that in Ex.D.5 he mentioned the due as Rs.20,800/- as on 21.08.1997 and in Ex.D.3 he noted the due as Rs.5,500/- as on 15.09.1997. Thus subsequent to the alleged loan on 05.05.1997 through the above exhibits, Ex.D.2 to Ex.D.5, the accused brought out through the complainant that two cheques were obtained from him as formality and subsequent to the alleged date of loan even as per the note written by the complainant the accused owed only Rs.5,500/- as on 15.09.1997. Thus the accused rebutted the presumption arising

against him under Sections 118 (a) and 139 of Negotiable Instruments Act.

8. It is well settled that it is not necessary for the accused to disprove the existence of consideration by way of direct evidence. The standard of proof evidently is preponderance of probabilities.

9. The Hon'ble Supreme Court in Hiten P.Dalal v. Bratindranath Banerjee reported in (2001) 6 SCC 16 has held as follows :

"Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man"."

10. The complainant has not explained under what circumstances, Ex.D.1 to Ex.D.5 came into existence and he has not attempted to establish how the above exhibits marked through him by the respondent are not relevant to the transaction alleged in the complaint.

11. The evidence of R.W.1 and R.W.2 also create doubt about the case put forth by the complainant. R.W.1 has deposed that he sat as a mediator between the complainant and the accused and he could not settle the issue as the accused demanded Rs.1,50,000/- from the complainant whereas the complainant told that he had to pay only Rs.17,000/-.

12. After analysing the evidence of both sides, the trial Court has rightly acquitted the accused and this Court does not see any reason to interfere with the findings of the trial Court and accordingly, this Criminal Appeal is liable to be dismissed.

13. In the result, this Criminal Appeal is dismissed, confirming the Judgment of acquittal, dated 28.08.2002 passed in C.C.No.8067 of 2000 on the learned IX Metropolitan Magistrate, Saidapet, Chennai.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

tsvn

To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.
2. The Public Prosecutor
High Court of Madras.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+ 1 cc to M/s.G.Jeremiah, Advocate, SR.81996

+ 1 cc to M/s.G.Walter Solomon Advocate, SR.81641

Judgment
in
Crl.A.No.1726 of 2002

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nr 02/01/2018



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