

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.880 of 2004

Thirunindra Narayana Finance Ltd
Rep. by its Director,
A.K.Prabakar,
No.64, 4th Avenue, Ashok Nagar,
Chennai.

...Appellant/Complainant

vs.

1.Jayapandian
2.Esther

...Respondents/Accused

Prayer: Criminal Appeal preferred under Section 378 Cr.P.C., to set aside the order of acquittal passed against the respondent/accused by the XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.6698 of 2002 dated 23.04.2004.

For Appellant : Mr.C.N.Niranjan

For Respondent : Mr.C.Baskaran

JUDGMENT

This appeal has been filed against an order of acquittal. The appellant/complainant, has filed a private complaint against the respondents/accused for the offence under Section 138 of Negotiable Instrument Act, in C.C.No.6698 of 2002, on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai. The trial Court, after trial, acquitted the respondents/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:-

The respondents/accused availed a finance facility and borrowed money from the complainant. In order to discharge the liability, the respondents/accused issued a cheque dated 11.03.2002 for a sum of Rs.15,00,000/-, drawn on State Bank of Bikaner and Jaipur, Ashok Nagar Branch, Chennai. When the above cheque was presented before the drawee bank on 13.03.2002 for collection, the cheque was dishonoured with an endorsement

"Payment stopped by the Drawer". Then, the appellant/complainant issued a legal notice to the respondent/accused. But the respondents disputed their liability and sent reply notice. Thereafter, complying with all legal formalities, the complainant has filed a private complaint before the Judicial Magistrate Court. The learned Judicial Magistrate had taken cognizance and issued summons to the respondents/accused.

3. In order to prove its case, the Executive Director of the appellant/complainant company was examined as P.W.1 and the Bank Manager was examined as P.W.2 and exhibited 10 documents, namely, Board resolution copy Ex.P1, returned Cheque Ex.P2, returned memo Ex.P3, legal notice Ex.P4, acknowledgement cards Ex.P5 and Ex.P6, statement of accounts Ex.P7, returned registered postal cover Ex.P8, Complaint copy of C.S.No.158 of 2002 Ex.P9 and the written statement filed in C.S.No.340 of 2003, to show that already the complainant filed a Civil Suit against the respondents and others for recovery of the said amount.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. and the first accused was examined himself as D.W.1. According to him, they have obtained 17 vehicle loan from the complainant company, at that time, in order to discharge the same, they have issued a blank cheque to the complainant and repaid the said loan amount. Later, they have also filed a civil suit in C.S.No.340 of 2003 against the complainant on the ground that the complainant have failed to repay the amount. Apart from that they have also marked a receipt for payment of Rs.3,44,000/- as Ex.D3. and a mortgage deed executed by them was marked as Exs.D4 and D5. Considering all the above materials, the trial Court acquitted the accused on the ground that the complainant failed to prove that there is a legally enforceable debt and the accused has raised a probable defence stating that the disputed cheque has been given as security and they have also filed a suit for recovery of amount from the appellant. Apart from that except the disputed cheque, there is no evidence available to show that the respondents/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 respondents and perused the materials available on record.

6. The learned counsel appearing for the appellant would contend that the respondents/accused have admitted the signature in the cheque. Once the signature found in the cheque

has been admitted, there is an initial presumption under Section 139 of the Negotiable Instrument Act that the cheque has been issued to discharge the liability. But, the accused has failed to discharge the initial burden and they have only produced and receipt for a sum of Rs.3,44,500/- where as the liability was Rs.15,00,000/- and the appellant failed to raise the initial presumption on him, the Court below ought not to have acquitted the accused on the ground that the complainant has failed to prove the liability. The learned counsel for the appellant further contended that the liability of the accused has been established by the complainant by producing a copy of the plaint in the suit filed by them before this Court, which is pending. The learned counsel for the appellant further contended that when the initial presumption has not been raised, the Court below ought not to have acquitted the respondents on the ground that the complainant failed to prove the liability.

7. Per contra, the learned counsel appearing for the respondents/accused contended that in the reply notice issued to the complainant, it has been clearly stated by the appellant that the cheque has been issued only as security for the purchase of 17 vehicles, and they have repaid the amount, and the disputed cheque has been given as security at the time of obtaining loan. But, suppressing the repayment, the complainant filed the suit in C.S.No.158 of 2002 against the respondents and the same was pending before this Court. Thereafter, the respondents have also filed a suit in C.S.No.340 of 2003 for recovery of out standing amount from the complainant. Apart from that the complaint also totally vague and the complainant did not mention date on which the amount was advanced, and they have also not produced any vouchers to show that the loan has been advance to the appellant. The learned counsel appearing for the respondents further contended that there are five complaints have been filed by the complainant against this respondent and other family members. All the five cases, the trial Court acquitted the accused. In respect of the acquittal of other cases, the complainant has filed the Criminal Appeals in C.A.962 and 963 of 2004 and this Court already dismissed the appeals holding that the appellant failed to prove the liability. Hence, he sought for dismissing the appeal.

8. I have considered the rival submissions.

9. It is the case where, the respondents/accused admitted his signature found in the cheque. Once the signature in the cheque is admitted, the initial presumption is against the respondent/ accused. It is a settled law that the initial presumption under Section 139 of the Negotiable Instrument Act can be raised by raising a probable defence which creates a doubt regarding the existence of a legally enforceable debt, as the presumption is a rebuttal presumption. In the instant case,

the respondents/accused contended that the respondents and their family members have numerous transaction with the complainant and they have also purchased 17 vehicles, at that time, they have issued a blank cheques as security. Thereafter, they have discharged the entire liability. Apart from that already the complainant has filed a suit in C.S.No.158 of 2002 against this accused and other family members for recovery of money. Thereafter, the respondent and his family members filed another suit in C.S.No.340 of 2003 against the complainant for redemption of mortgage of the property without insisting the payment and also directing the complainant to produce the accounts and refund the surplus amount collected by the complainant to the tune of Rs.15,00,000/- and now both the cases are pending before this Court.

10. To prove his case, the first respondent/accused examined himself as D.W.1 and he deposed that there were 17 vehicle loan transactions with the complainant, and all the amount has been settled. On perusal of the copy of the complaint, especially para three of the complaint, the complainant did not mention any thing regarding the date of advancement of loan. The complaint only says that the accused has availed finance facility and borrowed money from the complainant, the complainant did not mentioned anything about the the date of borrowel and total loan amount borrowed by the accused. Even, P.W.1, the Executive Director of the complainant's company did not say anything about the loan amount and date of disposal, he has simply stated that the respondent borrowed money.

11. Considering the complaint as well as the evidence of P.W.1, absolutely no materials to show the quantum of the loan amount advanced to the respondent. The complainant being a financial institution, they are expected to maintained proper account, but nothing was produced to establish the liability of the respondent. In the said circumstances, I am of the considered view that the complainant has failed to prove that there is a legally enforceable liability. Apart from that the yet another aspects of the case is that in a similar circumstances, the complaint filed by the complainant against the other family members of the respondent, was also ended in acquittal and the appeal filed by the appellant/complainant against the acquittal before this Court is also dismissed. The Court below considering the entire materials, 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 judgment of the trial Court.

12. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person,

accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. In the above said circumstances, I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

13. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 23.04.2004 passed in C.C.No.6698 of 2002 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai is hereby confirmed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The XVII Metropolitan Magistrate
Saidapet Chennai

+1 cc to Mr.L.Baskaran Advocate sr 79557

+1 cc ot Mr.V.T.Narendiran Advocate sr 80256

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