

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.A.No.196 of 2008

S.Vimala

... Appellant /Complainant

Vs.

P.Chandramohan

.. Respondent /Accused

Prayer:

Appeal filed under Section 378 Cr.P.C. against the Judgment of acquittal dated 22.10.2007 in S.T.C.No.701 of 2006 on the file of the Judicial Magistrate No.2, Hosur.

For Appellant : Mr.R.Surya Kumaran
For Mr.D.Shivakumaran

For Respondent : Mr.K.Myilsamy
For M/s. Va.Vu.Si. Vazhakagam

J U D G M E N T

The appellant has filed the appeal as against the Judgment of acquittal dated 22.10.2007 in S.T.C.No.701 of 2006 on the file of the learned Judicial Magistrate No.2, Hosur.

2.The case of the prosecution, is as follows:-

The respondent/ accused had approached the appellant herein for want of money, to develop his business, on 06.11.2005 and assured her, to return the debt, within three months. But, the respondent failed to repay the money. Hence, the appellant herein demanded the respondent to repay the money borrowed from her. Therefore, on 17.02.2006, the respondent issued a cheque bearing No.036754 for a sum of Rs.3 lakhs, drawn from the State Bank of India. When the appellant presented the cheque through her banker, ICICI Bank, Hosur, on 18.02.2006, the same was returned with the endorsement "Account closed".

3. Thereafter, the appellant issued legal notice on 14.03.2006, calling upon the accused to make payment and the said notice was received by the accused and the accused has sent a reply dated 16.03.2006, stating false reasons for non-payment. Thereafter, the appellant herein filed a petition under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.2, Hosur, in S.T.C.No.701 of 2006.

4. Since, the accused did not plead guilty, the trial was commenced. In order to prove the case of the prosecution, P.Ws.1 to 7 were examined and Ex.P.1 was marked. On the side of the defence, D.Ws.1 to 3 were examined and Ex.D.1 was marked.

5. After elaborate consideration, the trial Court, acquitted the respondent under Section 139 of the Negotiable Instrument Act.

6. Aggrieved against the judgment of the trial Court in S.T.C.No.701 of 2006 dated 22.10.2007, the appellant herein had preferred the present Criminal Appeal.

7. Heard the learned counsel appearing for the appellant and learned counsel for the respondent.

8. The learned counsel appearing for the appellant would submit that as per Section 139 of the Negotiable Instrument Act, the initial burden lies upon the appellant as the presumption is in favour of the holder of the said instrument. Accordingly, the appellant has clearly established that the instrument was issued by the respondent, in favour of the appellant, for legally enforceable debt, which was borrowed in the year 2005. Since, the said amount was not paid, in order to discharge the legally enforceable debt, the respondent issued the cheque, in favour of the appellant, to repay the debt. The said instrument was presented before the Bank, however, the same was returned as "Account closed". Further, the said facts were clearly established before the trial Court. However, the trial Court, on erroneous consideration of witnesses, acquitted the respondent, which is unsustainable in law. Hence, he prayed to allow the criminal appeal.

9. Per contra, the learned counsel appearing for the respondent would submit that the respondent/accused did not know the appellant and in fact, the respondent/accused had business transactions with the father-in-law of the appellant. Both the appellant and her father-in-law are lending money business, in that locality. Further, it is pointed out by the counsel for the respondent, as on the date of presentation of the cheque in question, there was no legally enforceable debt on the part of the accused. Even though the accused has admitted the issuance

of cheque, which gives raise to a legal presumption, yet in a proceeding under Section 139 of The Negotiable Instruments Act, such presumption is a rebuttable presumption. In order to rebut such presumption, the accused/respondent has examined witnesses on his side and also marked several documents to show that there was no existence of legally enforceable debt or liability in issuing the cheque in question. Hence, the appellant did not prove the case, that there was legally enforceable debt in favour of the appellant.

10.Further, this Court can interfere in the order of acquittal of the trial Court, in case, if there is any perversity; illegality or violation of principles of natural justice. Admittedly, the instrument was issued on 17.02.2006. On perusal of evidences, it is clear that the respondent/accused approached the appellant for want of money, to develop his business. Since, the accused/respondent known to all family members of P.W.1., she paid the amount of Rs.3 lakhs on 06.11.2005. But, thereafter, the respondent/accused did not repay the amount and in order to clear the legally enforceable debt, he issued a cheque on 17.02.2006 bearing cheque no.036754 in favour of the appellant. The said instrument was returned with the banker's memo as "Account closed". Then, the appellant sent a legal notice to the respondent/accused, for which, the accused sent a reply stating untenable reasons.

11.Now, the issue involved in this case is, 'whether there is any legally enforceable debt on the part of the respondent/accused or not ? P.W.1, clearly deposed that the amount of Rs.3 lakhs was paid by the appellant to the respondent/accused after pledging jewel in Indian Bank, Andevanapalli and further deposed in her cross examination that she did not know the address of the respondent and how many members were residing along with the respondent. Per contra, she stated in brief that both the family members were known to each other.

12.Apart from the above, in order to disprove the appellant case, the Manager, Indian Bank was examined as D.W.3 and in his evidence, he clearly deposed that the appellant did not pledge any gold jewels on 01.04.2004 to 31.03.2006, as alleged by the appellant and the prosecution witnesses. The said statement is clearly disproved the prosecution case, as if, the alleged amount was paid by the appellant to the respondent/accused after pledging the jewels.

13.Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was recorded by the trial Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme

Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 has held that, in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydrus vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that, an order of acquittal need not be interfered with by the higher Courts unless, there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

14. Having regard to the above parameters laid down by the Honourable Supreme Court in the above decisions, this Court is of the view that the order of acquittal recorded by the First Appellate Court does not suffer from any legal infirmity warranting interference by this Court.

15. So in view of the categorical opposition, this Court is not hesitating to arrive at a conclusion and I do not find any error in the order passed by the learned Judicial Magistrate No.2, Hosur, in S.T.C.No.701 of 2006 dated 22.10.2007. Accordingly, the Criminal Appeal is dismissed.
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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Judicial Magistrate No.2,
Hosur.

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

+1cc to Mr.Va.Vu.Si.VazhaKagam, Advocate, S.R.No.88052
+1cc to Mr.D.Shivakumaran, Advocate, S.R.No.88337

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SSD(CO)
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