IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on :21.08.2018]

[Pronounced on : 26.11.2018]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.102 of 2009

The Repatriates Co-operative Finance
& Development Bank Limited,
Repco Towers,No.33, North Usman Road,
T.Nagar, Chennai - 600 017
Rep.by their authorized person Mr.G.Narayanan ... Appellant

..Versus..

T.K.Panneerselvam ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records on Court below, hear the appeal, set aside the acquittal passed in C.C.No.11701 of 2004, dated 23.12.2008 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai 600 001 and allow the appeal thereby convicting the respondent/accused with maximum sentence and award ample compensation to the appellant.

For Appellant : Mr.P.V.Sanjeev
For Respondent : Mr.M.V.Balakrishnan

JUDGMENT

This appeal is filed against the order of learned XVI Metropolitan Magistrate in C.C.No.11701 of 2004, dated 23.12.2008.

2. The appellant herein has preferred a private complaint before the learned Judicial Magistrate, XVI Metropolitan Magistrate, George Town, Chennai in C.C.No.11701 of 2004, alleging that the cheque issued by the respondent has bounced and on issuing legal notice, the complaint has been lodged.

3. The appellant/private complainant has come with a definite case that the accused has availed purchase loan to purchase Pentium III computers at Rs.31,000/- and thereafter, he has failed to pay the amount and accordingly, he has issued

the cheque for Rs.48,900/- and on deposit, the same was bounced and hence, the complaint.

4. The suggestive case of the defence is that computer has not been supplied as stated by the Bank and there is no evidence as to the payment of loan or disbursement of the loan as pleaded by the appellant/private complainant and the E.M.I said to have taken and the amount represented in the Bank are totally different and hence, he pleaded that the presumption in favour of the Bank stands rebutted.

5. Taking into consideration Exhibit D1 and in the absence of any documents produced by the appellant-bank, the Court below has accepted the case of the respondent-accused and ordered acquittal and hence, the appeal is filed by the complainant-Bank.

6. Heard both sides and perused the records.

7. To prove the charges, prosecution examined P.W.1 and marked Exhibits P1 to P10 and on the side of the defence, no one has been examined and Exhibit D1 is marked.

8. The learned counsel for the appellant-Bank has contended that the trial Court has erred in not giving presumption in favour of the private complainant. It is the definite case of the private complainant that the respondent herein has applied for borrowal of the loan under Exhibit P3 and the loan was ordered under Exhibit P4 and as per Exhibit P5, voucher was obtained, wherein the signature of the respondent is found place in compliance of the amount to be paid for the purchase of Pentium III computer, and he had issued Ex.P6 cheque and the same was returned as per the memo Exhibit P7 and Exhibit P9 is the legal notice and Exhibit P10 is the acknowledgment receipt.

9. It is seen from the records that during the cross examination of P.W.1, legal notice issued by the appellant-complainant was marked as Exhibit D1 i.e., relating to the legal notice issued by the appellant on 15.03.2004 in respect of which the factum of Rs.31,000/- said to have been borrowed by the accused from the Bank and the cheque dated 12.03.2004 in No.393244 was issued by the respondent and it is contended by the accused that in respect of the alleged loan, already the above said cheque has been issued and case also been under progress and it is case in respect of Exhibit P6 cheque dated 10.08.2004 for an amount of Rs.48,900/- which is not supported by any pre-existing legally enforceable debt. Exhibit D1 was admitted by P.W.1.

10. On a combined reading of the contents of the private complaint and evidence of P.W.1, it is a specific case of the private complainant that the amount has been sanctioned under Exhibit P4 to and in favour of the Company namely Vijaya Sales Corporation. According to them, after the disbursement of loan Rs.31,000/- was paid, but the evidence is totally silent as to whether the amount is paid to the accused or to the Vijaya Sales Corporation for supply of Pentium III Computer as stated by them. No documentary evidence like ledger or receipt have been marked in this regard.

11. Furthermore, the amount of loan is only Rs.31,000/- as stated in the cross-examination of P.W.1, who admitted that the amount has to be paid in 36 E.M.I installments with 10% flat interest. Absolutely, there is no evidence as to how the amount of Rs.31,000/- which was disbursed, said to have resulted in Rs.48,900/-. The trial Court also commented that the appellant-Bank has not produced any document to show as to whether the amount of loan of Rs.31,000/- has been disbursed either to the respondent-accused or to the Vijaya Sales Corporation who is supposed to have sent the computer and delivered it to the respondent-accused. Furthermore, no document has been placed before the Court as to the delivery of the computer from the Vijaya Sales Corporation nor any delivery receipt has been filed before the Court. Further, P.W.1 having accepted Exhibit D1, legal notice issued in respect of loan of Rs.31,000/- in cheque No.393244, dated 12.03.2004, for which, he is said to have given Rs.35,757/- and when that being the case, the appellant-Bank is duty bound to explain as to how come this amount to Rs.48900/- came into existence and there was a pre-existing legally enforceable debt by the respondent with the bank. As contended by the respondent counsel, in respect of the alleged loan of Rs.31,000/- for the purchase of computer, already a cheque has been issued on 12.03.2004 which resulted in legal notice and acceptance of legal notice as reflected under Exhibit D1, which was admitted by P.W.1 in the cross examination, which assumes significance.

12. As observed by the trial Court, the appellant has not produced any document to show as to how the amount representing the said cheque amount is the loan amount which is a legally enforceable debt against the respondent. Furthermore, no document has been placed before the trial Court to show as to whether the respondent-accused has borrowed the above said amount for the purchase of Pentium-III computer. No document has also been placed before the Court regarding the alleged delivery of the Computer by the said Vijaya Sales Corporation to the accused and the amount said to have been given by the respondent at Rs.31,000/- appears to have been connected with Exhibit D1, dated 15.03.2004. Therefore, the trial Court has

rightly come to the conclusion that the respondent/accused has rebutted the presumption raised in favour of the appellant-Bank and the appellant-Bank has failed to discharge the burden that the cheque-in-issue relates to a pre-existing legally enforceable debt and it would amount to failure on the part of the complainant, which seems to have been rejected by the trial Court, which does not warrant any interference and taking note of the limitation in the scope of the appeal under Section 378 Cr.P.C. and also on the above factual position. I do not find any error committed by the trial Court and accordingly the appeal is devoid of merits and the same is liable to be dismissed.

13. In the result, this Criminal Appeal is dismissed confirming the acquittal ordered by the trial Court as against the respondent/accused.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1. The XVI Metropolitan Magistrate Court,
George Town, Chennai

2. The Public Prosecutor,
High Court, Madras.

3. The Section officer
Criminal Section, High Court, Madras 104.

+1 CC to Mr.M.V.Balakrishnan, Advocate sr 80139.
+1 CC to Mr.P.V.Sanjeev, Advocate sr 80599.

Crl.A.No.102 of 2009

SPD(CO)
SP(19/12/2018)