

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2018

DELIVERED ON : 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.323 of 2009

K.GnanaswaranAppellant/Complainant

Vs

Nirmala Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, to call for the records in connection with C.C.No.7891 of 1999 on the file of the V Metropolitan Magistrate, Egmore, Chennai and set aside the Judgment passed by the learned V Metropolitan Magistrate, Egmore, Chennai on 24.04.2009 in C.C.No.7891 of 1999.

For Appellant : Mr.L.Rajasekar

For Respondent : Mr.Kalaivanan
Legal Aid Counsel

JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed by the learned V Metropolitan Magistrate, Egmore, Chennai in C.C.No.7891 of 1999 dated 24.04.2009 under section 138 of the Negotiable Instruments Act.

2.Brief case of the Appellant:

The case of the appellant/complainant was that the respondent/ accused has borrowed a sum of Rs.2,00,000/- on 14.11.1996 and executed 2 promissory notes in favour of the appellant each value Rs.1,00,000/- (Exhibits-P1 and 2). To discharge the said loan, the respondent/accused executed a cheque drawn on City Union Bank, Anna Salai on 19.05.1999 (Exhibit P3). The said cheque was presented for payment through Tamil Nadu Mercantile Bank, Aminthakarai and on 19.05.1999 and the said cheque was returned unpaid for the reasons insufficient funds on 20.05.1999 and the return memo Exhibit-P5 was served

along with debit note Exhibit P6 to the complainant on 21.05.1999. The appellant/complainant has sent a lawyer's notice Exhibit-P7 dated 27.05.1999 demanding the amount of the said cheque. Since the postal acknowledgment was received the complainant has made complaint to the concerned post office and the said office have confirmed the service of the said notice on 31.05.1999 by their letter marked as Exhibit-P8. The respondent/accused has not paid the value of the cheque within the period mentioned under the act and the complaint was filed and the same was taken on file in C.C.No.7891 of 1999 and the learned Magistrate after appreciating the evidences on record, acquitted the respondent/ accused by his judgment dated 24.04.2009.

Rival Submissions:

3.The learned counsel for the appellant submits that the judgment passed by the learned V Metropolitan Magistrate, Egmore, Chennai dated 24.04.2009 in C.C.No.7891 of 1999 is arbitrary, illegal and against the facts and evidence placed before the Court.

4.The learned counsel for the appellant submits that the learned Magistrate ought to have convicted the said respondent instead of acquitting her.

5.The learned counsel for the appellant submits that the learned Magistrate has considered extraneous to acquit the accused and the said conclusion was not supported by any evidence on record.

6.The learned counsel for the appellant submits that the learned trial Magistrate erred in deciding that the complainant has no sources to the said loan amount to the accused at the age of 21.

7.The learned counsel for the appellant submits that the learned Magistrate has failed to give proper reasoning for acquitting the said accused from the offences committed by her.

8.The learned counsel for the appellant submits that the trial Judge has completely neglected and ignored the statements and argument placed on the side of the appellant/complainant.

9.The learned counsel for the appellant submits that the learned trial Magistrate has failed to look in to the undisputed fact of execution of the promissory notes and cheque.

10.This Court directed the Legal Aid to appoint the Legal Aid Counsel for the Respondent since there is no representation on his side. Learned Counsel Mr.Kalaivanan, Advocate was appointed as a New Legal Aid Counsel for the respondent and he supported the judgment passed by the trial Court.

11.Advancing his arguments, the Learned Counsel for the Respondent submits that it is the duty of the appellant to prove that the cheque was issued for "legally enforceable debt" and the alleged loan transactions between the appellant and the respondent creates serious doubt.

12.I have heard Mr.L.Rajasekar, learned counsel for the appellant and Mr.Kalaivanan, learned Legal Aid Counsel appearing for the respondent and perused the entire materials available on record.

13.The point that arises for my consideration is:

a) Whether the Trial Court was justified in granting an order of acquittal of respondent for the charge under Section 138 of N.I. Act?

14.The Complainant as PW1 testified in terms of the complaint before the trial Court. serious discrepancies and inconsistencies were brought out during his cross examination to discredit his evidence by the respondent/accused.

15.The specific case of the respondent/accused was that separate case is pending between the appellant and her husband and Exhibit.P1 cheque was not issued as security for the loan amount received from the appellant. Except the interested version of PW1, the Complainant, there was no other evidence or materials substantiated to prove his case. That part, as the appellant has himself admitted that at the time of execution of Exhibit.P1 cheque, he was aged about 21 years and presumptions under Sections 118 and 139 of Negotiable Instruments Act stands disproved by the respondent. The appellant has failed to rebut the above presumptions effectively. As for as the present case is concerned, the evidence of the Appellant goes a long way in

making out the clear cut case and there were serious material contradictions in respect of the Cheque and Pro-note issued in question. The presumption under Section 138 of the Negotiable Instrument Act is not an automatic one when the entire loan amount as alleged in the complaint creates the shadow of doubts. Further the Respondent/Accused is able to show certain materials by adducing evidences to shake the case of the Appellant/Complainant, then the preponderance of the probabilities can be accepted by the Trial Court, provided, the said materials are worthy of acceptance and they satisfy the subjective conscious of the Court.

16.For all these reasons, I am inclined to confirm the findings of the Courts below that the accused has not committed the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, appeal filed by the appellant is dismissed.

17.The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Mr.Kalaivanan, Legal Aid Advocate.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The V Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Public Prosecutor,
High Court, Chennai.
- 3.The Section Officer/Record Clerk,
Criminal Section,
High Court, Madras.

4.The Legal Aid Authority,
High Court, Madras.

+1cc to Mr.L.Rajasekar, Advocate Sr.86488

Criminal Appeal No.323 of 2009

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srg 04/01/2019



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