



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.05.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.A.No.594 of 2009

T.Saroja ... Appellant/Complainant
Vs.
M.Sasikala ... Respondent/Accused

PRAYER:- Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, against the judgment of acquittal passed by the learned Judicial Magistrate Court at Sathyamangalam, Erode District in C.C.No.684 of 2004, dated 22.10.2008 for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

For Appellant : No appearance

For Respondent : Mr.K.Sadasivan for
Mr.P.M.Duraiswamy

J U D G M E N T

This Criminal Appeal has been filed against the judgment of acquittal passed by the learned Judicial Magistrate Court at Sathyamangalam, Erode District in C.C.No.684 of 2004, dated 22.10.2008 for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

2. The appellant herein has filed a private complaint stating that the respondent herein borrowed a sum of Rs.25,000/- from her as hand loan on 01.09.2004 and issued a post dated cheque dated 01.10.2004. The said cheque was presented for encashment on 08.11.2004 and the same was returned on the same day with an endorsement "Payment stopped by the drawer". Therefore, the appellant issued a statutory notice dated 19.11.2004, calling upon the respondent herein to pay the amount due under the said cheque, within fifteen days from the date of receipt of the said notice. The respondent herein has received the said notice and sent a reply notice dated 23.11.2004 with false averments, but, she did not make payment. Hence, the appellant herein has filed a complaint to punish the respondent herein under Section 138 of the Negotiable Instruments Act. For the sake of convenience, the parties are referred to as described before the Trial Court.

3. Based on the said complaint, the Judicial Magistrate, Sathyamangalam, has taken the case on file in C.C.No.684/2004 and issued summons to the accused. On appearance of the accused, the accused was questioned with regard to the



offence said to have been committed by her. The accused pleaded not guilty and therefore, the learned Judicial Magistrate has conducted the trial. During trial on the side of the complainant, the complainant examined herself as P.W.1 and marked P1 to P4 as Exhibits. The complainant's side evidence was closed with P.W.1. Thereafter, the accused was questioned under Section 313 of the Criminal Procedure Code with regard to the incriminating circumstances available in the evidence of the P.W.1. The accused denied the same as false and examined herself as D.W.1. She also examined two more witnesses as D.W.2 and D.W.3 and marked D1 to D12 as exhibits. After closing the evidence on the side of the defence, the learned Judicial Magistrate heard the arguments on both sides and acquitted the accused by the Judgment dated 22.10.2008. Aggrieved by the same, the complainant has filed the present appeal.

4. Today, this matter has been taken up for hearing. At the time of calling work, there was no representation on behalf of the appellant. Hence, the matter has been passed over and taken up at 12.45 p.m. Even at that time, no representation on behalf of the appellant. Hence, after hearing the arguments of the learned counsel for the respondent/accused and perusing the trial Court's judgment and records, the judgment is being passed.

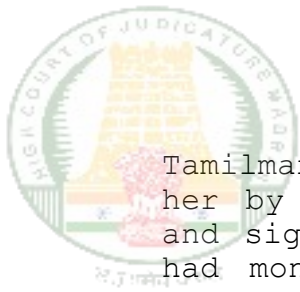
5. The points for consideration are as follows:-

1. Whether the learned Judicial Magistrate was right in acquitting the accused?
2. Whether this appeal has to be allowed?

6. Point Nos.1 and 2:-

The case of the appellant/complainant is that on 01.09.2004, the respondent/accused borrowed a sum of Rs.25,000/- from her as hand loan and with a view to discharge the said loan, the accused has issued a cheque for Rs.25,000/-. The said cheque has been marked as Ex.P1. Her further case is that she has presented the said cheque for collection in the Bank on 08.11.2004 and the same was returned on the same day with a bank memo "Payment stopped by the drawer". The said bank memo has been marked as Ex.P2. Her further case is that she has issued a statutory notice on 19.11.2004, calling upon the accused to pay the amount. The office copy of the said notice has been marked as Ex.P3. After receipt of the said notice, instead of making payment, the accused has sent a reply notice dated 23.11.2004 with false averments and hence, the appellant was forced to file the above case. The said reply notice has been marked as Ex.P4.

7. The case of the defence is that the respondent/accused did not borrow any amount from the complainant and she did not issue the Ex.P1 cheque in favour of the complainant. Her further case is that the complainant's husband viz., ~~familyman~~, is a financier, who used to lend money. The said



Tamilmani used to discount the cheques which were issued to her by her customers and also lend money by obtaining blank and signed cheques as security. Her further case is that she had money transactions with him for the past two and half years and as on 05.10.2004, she was liable to pay a sum of Rs.2.5 lakhs to him and also she has paid a sum of Rs.2.5 lakhs as full and final settlement of her transactions with the said Tamilmani on 05.10.2004 and at that time, the said Tamilmani returned only seven cheques and told her that one cheque has been misplaced and also assured that he will return the said cheque as soon as it is traced out. Her further case is that believing his words, she paid the amount to him and settled the matter. However, as abundant caution, she informed the Bank, not to honour the cheque, if it is presented for collection and that being so, she was very shocked and surprised to receive notice from the complainant and hence, she has issued a reply notice, appraising the real facts.

8. P.W.1 in her evidence, during cross examination, has admitted that the accused had money transaction with her husband Tamilmani and also admitted that the accused has settled the amount due to her husband on 05.10.2004. She also stated that her husband has obtained pro-note from the accused for the amount lent to her and that being so, it is unbelievable that the complainant gave a sum of Rs.25,000/- to the accused without obtaining any document.

9. It is also to be pointed out that P.W.1 has stated that apart from this transaction, the accused has some other transactions on earlier occasions and in those occasions, she had issued the cheques and when those cheques were presented for collection and they were honoured. But, oral evidence of D.W.2 (Bank Manager) and also Ex.D12 (Bank account statement of the complainant) would show that on previous occasions, no such cheques have been presented on her account. Ex.P1 alone presented on her account for encashment. It lead to an inference that the complainant had no transaction at all with the accused. Only for the purpose of the case, she has stated that on previous occasions also she had transactions with the accused. In the said circumstances, the learned Judicial Magistrate found that the accused has rebutted the presumption which arises under Section 139 of the Negotiable Instruments Act. For arriving such conclusion, the learned Judicial Magistrate relied upon the decision of the Hon'ble Supreme Court in M.S.Narayana Menon @ Mani Vs. State of Kerala and others, reported in 2006 (3) C.T.C. Page 730, wherein, the Hon'ble Supreme Court of India held as follows:-

"The rebuttal evidence need not be direct and it can be inferred even such circumstances. It was also held that the defence version is shown to be probable and also held that preponderance of probabilities is a rule for appraising the rebuttal evidence and the standard of proof required is not that high as expected from the complainant."



10. In this case, the learned Judicial Magistrate found that the accused has rebutted the presumption through the evidence of the complainant itself. Further, he found that in spite of the specific allegations made against the husband of the complainant in the reply notice, the complainant failed to examine her husband and that also probablise the case of the defence.

11. So, this Court is of the view that the aforesaid findings of the learned Judicial Magistrate, cannot be said as perverse. Therefore, this Court is not inclined to interfere with the judgment of acquittal. Accordingly, these points are answered against the appellant/complainant.

12. In the result, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Judicial Magistrate Court,
Sathyamangalam,
Erode District.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to MR.P.M.Duraisamy, Advocate SR.No.33922

GP(CO)
sm:21.6.2018

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