IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.11.2018

Coram

The Hon'ble Mr. Hon'ble M.Dhandapani

Crl.A.No.611 of 2009

N.Ramesh ...Appellant/Complainant

Vs.

A.Rajeswari,
Proprietor M/s.A.Rajeswari Plastic Industries,
No.4/51, Church Road, Pallavaram, Chennai - 600 043.
... Respondent/Accused

Criminal Appeal, filed under Section 378 of Cr.P.C., against the judgment of acquittal passed by the learned XV Metropolitan Magistrate, George Town, Chennai -1, in C.C.No.10252 of 2004, dated 09.07.2009.

For Appellant : Mr.P.Anand

For Respondent : No appearance

JUDGMENT

The complainant in C.C.No.10252 of 2004, on the file of XV Metropolitan Magistrate Court, George Town, Chennai, trial Court is the appellant herein. He filed the above complaint against the respondent for offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act'). The Trial Court dismissed the said complaint, and acquitted the respondent. Aggrieved by the same, the appellant/complainant has filed the present Appeal.

2. The case of the appellant/complainant, as seen from the complaint is that the complainant has entered into an lease agreement with the respondent on 11.02.2000, for running a business under the name and style 'Kids Computer', for which purpose, the respondent has let out a portion in the upstairs of her property, and the appellant paid a sum of Rs.70,000/- towards advance. However, subsequently he vacated the premises and handed over vacant premises to the respondent and demanded

the advance amount paid by him. However, the respondent expressed her inability to pay the advance amount due to loss in her business and assured to pay the amount later, and accordingly, she issued a cheque on 25.02.2004, bearing No.029816, for a sum of Rs.1,76,000/-, drawn on Indian Bank, Pallavaram Branch, towards discharge of her liability. However, when the said cheque was presented for encashment, the same was dishonoured. Thereafter, the appellant issued a legal notice, 20.08.2004 along with bankers memo to the respondent. Despite receipt of the same on 21.08.2004, the respondent neither sent any reply, nor paid the amount. Therefore, the private complaint under Section 138 of N.I. Act was filed against the respondent.

3. Before the trial Court, in order to prove the case against the respondent, the appellant examined himself as P.W.1 and marked eight documents. On the side of the respondent, respondent examined herself as D.W.1 and marked three documents.

4. Trial Court on appreciation of both oral and documentary evidence, dismissed the complaint against which, the present Appeal is filed, as indicated above.

5. The learned counsel appearing for the appellant submitted that though the complaint is silent about the tenancy agreement with the respondent, however, the appellant is a tenant under the respondent and he entered into such agreement with the respondent, and paid a sum of Rs.70,000/- to the respondent as advance in the year 2002. The rental agreement is marked as Ex.P.1. On perusal of Ex.P.1, it is seen that on 11.02.2000, such agreement was entered into between the appellant and the respondent and the appellant paid a sum of Rs.70,000/- as advance and agreed to pay the monthly rent of Rs.1,200/-. Thereafter, as per Ex.P.2, it is seen that the respondent borrowed a sum of Rs.1,91,000/- on various dates. Totally, the respondent is liable to pay a sum of Rs.1,91,000/-. However, after deducting Rs.15,000/-, the respondent is liable to pay Rs.1,76,000/-, thereby, the respondent issue a cheque of Rs.1,76,000/- on 25.02.2004. However, the said cheque when presented for realization, returned with an endorsement 'Funds insufficient'. Therefore, the appellant filed the complaint against the respondent. Hence, as per Section 118 of N.I. Act, presumption can always be drawn in favour of the holder of the cheque, (appellant in this case) and accordingly, he clearly established that there was legally enforceable debt by the respondent towards discharge of her liability. However, all these aspects were not considered by the Court below and dismissed the complaint. Therefore, the learned counsel prays for allowing the Appeal.

6. Though notice was served on the respondent, through Court as well as privately, neither she has appeared in person nor represented by any counsel on her behalf. However, since this Appeal is of the year 2009, this Court is not inclined to keep this Appeal and proceeds to dispose of the same with the materials available on record.

7. On a perusal of the complaint, it is seen that the complaint did not disclose the tenancy relation that existed between the appellant and the respondent. The complainant simply states that the respondent issued a cheque in favour of the appellant for a sum of Rs.1,76,000/- and the same when presented for realisation returned with an endorsement 'Funds Insufficient'.

8. Further, it is not in dispute that the complainant has entered into a lease agreement with the respondent on 11.02.2000, for running a business under the name and style 'Kids Computer', for which purpose, the respondent has let out a portion of her property, as evident from Ex.P.1. The appellant also paid an advance sum of Rs.70,000/- and agreed to pay monthly rent of Rs.1200/-. Immediately, possession was also handed over in favour of the appellant. Though it is the case of the appellant that, subsequently, he vacated the premises, handed over vacant possession to the respondent and demanded the advance sum of Rs.70,000/- paid by him and the respondent issued cheque with respect to the discharge of her liability, however, from the documents marked on the side of the respondents, viz., Exs. D.1 to D.3, it is seen that there appears to be several transaction taken place between the appellant and the respondent. For instance, Ex.D.2 is the undertaking letter, stated to have given by the respondent in a 10 Rupees Stamp Paper, which was purchased in the name of the appellant on 19.08.2002. However, the said undertaking letter was subsequently withdrawn on 21.01.2004.

9. Even on perusal of the instrument marked as Ex.P.3, it is seen that the date of the instrument and other portions were filled in different ink. Though it is the case of the appellant that he vacated the premises on 31.03.2003, there is no proper explanation on his part for executing the document by the respondent in his favour. That too, the said instrument was purchased on 19.08.2002. Even on perusal of Ex.P.4 bankers memo, it reveals that that the instrument was returned on the ground 'insufficient funds'. Thereafter, legal notice was issued. Though reply was not filed to the said legal notice, however, she issued two cheques each for a sum of Rs.50,000/-, which were also marked as Ex.P.8. Further, the respondent also examined herself as D.W.1 and her deposition was recorded.

On close perusal of the cross examination of P.W.1, it is seen that the appellant and his wife and the appellant's brother were in the habit of lending financial support to the respondent whenever, she demands. P.W.1 also admitted that, whenever, he gives money, he used to collect a blank cheque for the purpose of security.

10. However, there is no plausible explanation with regard to Ex.D.2, the undertaken letter, stated to have given by the respondent. However, the fact remains that said undertaking letter was subsequently withdrawn on 21.01.2004. Even on perusal of the documents filed by the respondent, exhibited as D.1 to D.2, the same would clearly reveal that there is a pro note issued by the respondent in favour of the appellant as well as his wife.

11. In view of the above, this Court is of the opinion that the complainant has not established his case that the instrument in question was not issued by the respondent towards legally enforceable debt and the said document was issued in favour of the appellant for the purpose of security at the time of entering into agreement. Further, even on perusal of the instrument in question it is clearly seen that the signature, date and other columns were filled up by the complainant to suit his requirement. Therefore, in the light of the law laid down by the Hon'ble Supreme Court, in the case of C.K. Dasegowda and others Vs. State of Karnataka reported in [(2014) 13 SCC 119] wherein, the Hon'ble Supreme Court, following its intra Court's judgments, arrived at a conclusion that the High Court erred in setting aside the order of the acquittal in the absence of any legal and factual evidence on record to prove the findings and reasons recorded in the judgment of the trial Court as perverse. In this context, it would be beneficial to refer to the relevant paras based on which, the Hon'ble Supreme Court arrived at such findings and the same is extracted hereinbelow:-

> "14. In the case of Chandrappa v. State of Karnataka[1], it has been held by this Court as under:
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> "39. In Harijana Thirupala v. Public Prosecutor, High Court of A.P., this Court said:
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> 12. Doubtless the High Court in appeal either against an order of acquittal or conviction as a court of first appeal has full power to review the evidence to reach its own independent conclusion. However, it will not

interfere with an order of acquittal lightly or merely because one other view is possible, because with the passing of an order of acquittal presumption of innocence in favour of the accused gets reinforced and strengthened. The High Court would not be justified to interfere with the order of acquittal merely because it feels that sitting as a trial court it would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

40. In Ramanand Yadav v. Prabhunat Jha this Court observed;

21. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not".

41. Recently, in Kallu v. State of M.P., this Court stated;

8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court".

42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere

with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. In the light of the above discussion, I do not find any perversity or illegality in the order passed by the Court below. Accordingly, this Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

The XV Metropolitan Magistrate,
George Town, Chennai -1

+1cc to Mr.A.Sermaraj, Advocate SR.No.80784

Crl.A.No.611 of 2009

VG II(CO)
GMY(07/02/2019)