

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2018

DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.724 of 2009

S.Chandran ... Appellant/Complainant

Vs

R.Sundaram ... Respondent/Accused

Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment of acquittal passed in STC.No.1628 of 2006 dated 10.04.2008 on the file of Judicial Magistrate No.II, Attur, Salem District.

For Appellant : Mr.Sundar Mohan

For Respondent : Mr.V.R.Rajasekaran

JUDGMENT

This appeal is directed against the order of acquittal in S.T.C.No.1628 of 2006 on the file of the Learned Judicial Magistrate Court No.II, Attur.

2.The case of the Appellant /Complainant is as follows:

On 14.1.2006 the Respondent herein issued a post dated cheque bearing No.251170 drawn on S.D.C. Co Operative Bank, Kangavalli Branch for the amount of Rs.15 Lakhs borrowed from the Appellant/Complainant on 21.10.2005 and executed a pro-note in favour of the Appellant. The Respondent/Accused requested the Appellant/Complainant to present the cheque for collection on 28.9.2006 and accordingly the cheque was presented and on the same day it was dishonoured due to "funds insufficient". The Appellant/Complainant issued Mandatory Notice dated 5.10.2016. After the expiry of 15 days the Respondent/Accused sent his reply on 18.10.2006. As the Respondent failed to make payment, the Appellant/Complainant preferred the complaint.

3.The Respondent/Accused completely denied the case of the Appellant that he borrowed Rs.15 Lakhs from the Appellant/Complainant, execution of pro-note dated 21.10.2005 and issuance of cheque dated 21.4.2006. There was no liability

on the part of him in honour to the cheque in question and the Appellant had managed to collect one cheque leave bearing No. 251170 issued by the Bank in the year 1998 from the Business Partners of the Respondent and forged the signature and presented the cheque for collection on 28.9.2006. The Appellant had no resource to extent the loan of Rs.15 Lakhs to the Respondent.

4.The Appellant/Complainant examined himself as PW1 and examined the PW2 Bank Manager. The Learned Trial Court on an analysis of the evidence available on record held that the complainant had failed to establish his case beyond reasonable doubt and acquitted the Respondent/Accused for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the order of acquittal, the Appellant filed the present appeal after obtaining leave.

5.I heard Mr.Sundar Mohan, learned counsel for the Appellant and Mr.V.R.Rajasekaran, learned counsel for the respondent and perused the entire materials available on record.

6.The Learned Counsel appearing for the Appellant submits that the Trial Court on misreading the evidence of PW1 in part and comes to the conclusion that the cheque was not given in discharge of liability.

7.The Learned Counsel for the Appellant further submits that merely because there is no endorsement in the promissory note regarding the receipt of cheque it cannot be held the cheque was not issued in discharge of any debt or liability and there is a statutory presumption in favour of the appellant under Section 139 of Negotiable Instruments Act.

8.The Learned Counsel for the Appellant contends that since the seal of the bank was not found in the return memo it has not been established that the cheque was presented with the bank and dishonoured and the Learned Trial Court failed to consider the evidence of PW2, Bank Manager in a proper prospective. The learned counsel filed the copy of the Order passed in CrI.O.P.No.31006 of 2007 filed by the Respondent for quashing the S.T.C.No.1628 of 2006 which was dismissed by this Court on 22.10.2007.

9.Per Contra, the Learned Counsel for the Respondent submits that the Learned Trial Court has approached the evidence carefully and the judgment does not warrant any interference and placed the judgment passed by this Court in Criminal Appeal Nos.67 and 69 of 2016 dated 31.07.2017 reported in (2017) 3 MLJ (Cr1) 679.

10.A cursory perusal of the complaint in S.T.C.No.1628 of 2006 on the file of the learned Trial Court indicates that the Appellant/Complainant had averred that the Respondent/Accused is liable to pay the cheque amount with the interest at the rate of 24% and that there was a "Legally enforceable liability" between the Respondent/Accused and the Appellant /Complaint as per under Section 138 of Negotiable Instrument Act.

11.It is to be noted that the cheque No.251170 dated 21.04.2006 issued for Rs.15 Lakhs drawn on SDB Bank Kangaballi Branch and the Appellant/Complaint issued a statutory Legal Notice dated 05.10.2006 to the Respondent/Accused demanding payment in respect of the aforesaid the bounced cheque within 15 days The said legal notice was acknowledged by the Respondent and reply notice was issued on 18.10.2006 alleging complete denial of loan , execution of pro-note and issuance of cheque for the amount of Rs.15 Lakhs.

12.The Appellant/Complaint in his proof affidavit before the Trial Court, has stated that on 21.10.2005 the Respondent/Accused received a sum of Rs.15 Lakhs as hand loan for the development of school and executed a pro-note. Due to the pressure, the Appellant/Complainant requested the Accused to repay the amount and for that the Respondent/Accused issued a post dated cheque on 14.01.2006 and the same to be presented on 21.04.2006. The Respondent/Accused again requested the Appellant to present the cheque for collection on 28.9.2006 and the cheque was deposited for collection and got returned because of the reason "insufficient funds". PW1 in his cross examination had specially admitted that the cheque was not issued for the loan amount of Rs.15 Lakhs. He further deposed that at the time when he lent money there was no document to show that he had money in his hand and that he was having the money in cash of Rs.8 Lakhs and borrowed Rs.7 Lakhs from his father in law. Further in his cross examination he admitted the pending of various cheque bounce cases against him in other Courts and residing in a tin sheeted house. A suggestion was put to the Appellant denying the signature contained in cheque Exhibit P1 and in the pro-note Exhibit P6. There was a specific suggestion put to the PW1 that he has no source for lending loan amount of Rs.15 Lakhs.

13.The evidence of PW2, (Manager of SDC Bank) reveals that the cheque in question was returned because of the "Funds Insufficient" and deposed about the transactions made by the Appellant/Complainant between 30.11.2005 to 30.11.2006. In his cross examination, the Bank Manager deposed that there was no transaction of above Rs.50,000/- in the savings account maintained by the Appellant and only a balance of Rs.484 was pending for the past one year.

14.Admittedly in the instant case, the execution of pro-note and cheque was challenged by the Respondent/Accused for the amount of Rs.15 Lakhs. Further the Respondent/Accused disputed his signature seen in the cheque No.251170. In fact the defence of the Respondent/Accused is that the cheque leaves were given to the other business partners and the same was taken by the Appellant/Complainant and was misused resulting in the case being foisted upon him. Before the Trail Court, the Respondent/Complainant had not gone in to the witness box to speak about the facts. But the Appellant/Complainant was extensively cross examined by the Respondent/Accused. Therefore in terms of section 139 of the Negotiable Instrument act, the Respondent/Accused cannot be presumed to have issued the cheque for the legally enforceable debt since he denied his signature contained in the cheque. The dismissal of quash petition filed by the Respondent is no way connected with the main hearing of the appeal and this Hon'ble Court advised the parties to proceed with the trial.

15.Once the presumption is rebutted, the onus shifted to the Appellant/Complaint and it is for him to prove that the cheque was issued towards legally enforceable liability. Except the disputed documents namely, the cheque and pro-note, there was no reliable evidence adduced to show that the Appellant/Complainant has lent Rs.15 Lakhs to the Respondent/Accused. The mere oral evidence of PW1 lending a huge cash of Rs.15 Lakhs cannot be accepted for the simple reason that the savings account maintained by him do not cross over the limit of Rs 50,000/- and for the past one year the account balance is maintained in Rs.484/- The Appellant/Complainant has not been able to show any material to indicate that he has got so much money on the relevant date to lend as claimed by him. Under these circumstances it can be safely concluded that the complainant has not proved that the cheques in question were issued for the discharge of legally enforceable debt. The Appellant has not proved his case for an offence under Section 138 of the Negotiable Instruments Act. The view taken by the Trail Court is permissible in the evidence on record. The appreciation of evidence by the Trail Court is not perverse.

16.The Hon'ble Supreme Court in Muralidhar @ Gidda and Another V State of Karnataka , AIR 2014 SC 2200 : (2014) 5 SCC 730LF KBUBD 2014 SC 153 L (2014) 2 MLJ (Cr1)341 has held that

"if the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified".

17.In view of the dictum laid down by the Hon'ble Supreme Court and for the reasons stated above, I am of the considered view that there is no ground to interfere with the judgment of acquittal.

18.In the result , this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.II,
Attur, Salem District.

+1cc to Mr.V.R.Rajasekaran, Advocate, S.R.No.78613

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SS(CO)
SSM(07/12/2018)

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