

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 14.03.2018
DELIVERED ON : 14.12.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.783 of 2009

Kumaraswamy Gounder

... Appellant

Vs

Kalavathy

.... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the order of acquittal passed by the District Munsif-cum-Judicial Magistrate, Kodumudy in C.C.No.159 of 2006 dated 11.09.2009.

For Appellant : Mr.K.Sakthivel
For Respondent : Mrs.S.Sujatha
Legal Aid Counsel

JUDGMENT

This criminal appeal is filed by the appellant against the order of acquittal passed by the learned District Munsif cum Judicial Magistrate, Kodumudy in C.C.No.159 of 2006 dated 11.9.2009.

2.Brief case of the appellant

The respondent borrowed a sum of Rs.2,25,000/- on 30.07.2006 from the appellant for her urgent business expenses and issued a post dated cheque bearing No.719619 drawn on Oriental Bank of Commerce, Erode Branch dated 29.08.2006. The appellant presented the cheque for collection as per the assurance of the respondent through his bank namely Canara Bank Nadupalayam Branch from the same have been returned as "Funds Insufficient" on 02.09.2006. The appellant issued the lawyer notice to the respondent on 12.09.2006 and the accused received the same on 16.09.2006 and failed to repay the amount. Hence the complaint was filed by the appellant under sections 138 and 142 of the Negotiable Instruments Act.

3.Before the learned Trial Court the appellant was examined as PW1 and Exhibits-P1 to P8 were marked. The respondent was examined as DW1 and Exhibits-D1 to D4 were marked on her side.

4. On careful perusal of records, Exhibit-P1 the cheque dated 29.08.2006, seeing that the signature and the letters were on different inks and the appellant has not placed any materials to substantiate his claim of the loan amount of Rs.2,25,000/-, the learned trial Court acquitted the respondent/accused on the ground that the appellant failed to prove that the loan amount issued to the respondent is a legally enforceable debt.

5. The learned counsel for the appellant contended that the learned trial Court had not properly appreciated the evidence, the admission made by the PW1 that he had means to lend the amount had been overlooked by the trial Court and the cheque was given as a blank cheque to be a collateral security and nothing ill motive can be attributed against the difference in inks for filling up particulars in the cheque. It is not in dispute that Exhibit-P1 is a cheque leave supplied by the bank to the petitioner/ accused in respect of the account maintained by her.

6. The learned counsel for the appellant cited the judgment of the Hon'ble Apex Court reported in (2008) 4 SCC Page 530 and the judgment of this Court reported in (2009) (i) CTC Page 361.

7. I heard Mr.K.Sakthivel, learned counsel for the appellant and Mrs.S.Sujatha, learned Legal Aid Counsel for the respondent and perused the entire records.

8. The settled proposition of law laid down by the Hon'ble Supreme Court is that "An order of acquittal should not be lightly interfered with even if the Court believes that there is some evidence pointing out the finger towards the accused."

9. In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, provided guidelines for the Appellate Court in dealing with the cases in which the trial Courts have acquitted the accused. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial Court. The trial Court's acquittal bolsters the presumption that he is innocent.
2. The power of reviewing evidence is wide and the appellate Court can re-appreciate the entire evidence on record. It can review the trial Court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial Court.
3. The appellate Court should always keep in mind that the trial Court had the distinct advantage of watching the demeanour of the witnesses. The trial Court is in a better position to evaluate the credibility of the witnesses.

4.

4. The appellate Court may only overrule or otherwise disturb the trial Court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts /appellate Courts must rule in favour of the accused.

10. Careful scrutiny of all the judgments lead to the definite conclusion that the appellate Court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The appellate Court would not be justified in setting aside the trial Court judgment unless it arrives at a clear finding on marshaling the entire evidence on record that the judgment of the trial Court is either perverse or wholly unsustainable in law.

11. On keeping the above said propositions, I marshal the evidence adduced by the both parties.

12. Admittedly the respondent signed the cheque and handed it over to the appellant. But curiously the respondent would contend that the said cheque was issued as a blank cheque and alterations were made by the appellant. The appellant was cross examined by the respondent with the suggestion that he did not have sufficient means to advance such a huge amount, PW-1 was categorically denied it and come forward with an explanation that he had sufficient means to lend the amount.

13. It should also be noticed that, the respondent/accused did not care to send a reply setting out the defences raised in this case before the learned trial Court. The legal notice have been marked as Exhibit-P3 and the acknowledgement has marked as Exhibits-P6 and P7 and the bills issued during the course of business transaction is marked as Exhibit-P8. All the above said points had not been properly adverted to and appreciated by the learned trial Court which leads to erroneous conclusion that the offence under section 138 of the Negotiable Instruments Act had not been established beyond reasonable doubt.

14. It is also settled by the Hon'ble Apex Court that while there is no doubt that Court can compare the disputed handwritings / signature / finger impression with the admitted handwriting signature/finger impression, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a Court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger

impression and after verifying whether the same characteristics are found in the disputed finger impression.

15.The learned trial Court have not analyzed the aforesaid principles in a proper perspective and evidences properly, acquitted the respondent /accused. In this case, the appellant have the burden in proving his case beyond reasonable doubt. As rightly pointed out by the learned counsel for the appellant, there is no law or custom pointing the signature and other writing on the cheque leave should be of the same ink. The learned trial Court without any evidence of expert opinion has come to the conclusion that there was correction in filling the date. Even if such an assumed correction has not taken place that would not have materially altered the validity of the cheque and once the respondent/accused having admitted the signature in the cheque, the presumption is that the cheque has been issued for legally enforceable debt.

16.In the result:

(a) this Criminal Appeal is allowed and the order passed by the learned District Munsif cum Judicial Magistrate, Kodumudy in C.C.No.159 of 2016 dated 11.09.2009 is set aside;

(b) the respondent/accused is convicted for six months for the offence under Section 138 of N.I.Act and shall pay a sum of Rs.5,000/- as fine;

(c) the respondent/accused is directed to pay a sum of Rs.2,25,000/- as compensation to the appellant.

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

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif-cum-Judicial Magistrate,
Kodumudy.

2.The Secretary,
Legal and Service Authority,
High Court, Madras.

+1cc to Mr.K.Sakthivel, Advocate, S.R.No.87525

+2cc to Mr.S.Sujatha, Advocate, S.R.No.86546

Criminal Appeal No.783 of 2009

RK(CO)

GSP(11/02/2019)