IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.Appeal No.221 of 2007

V.Natarajan .. Appellant/Complainant

Versus

K.Ganapathy .. Respondent/Accused

Prayer: This Criminal Appeal filed under Section 378 of Code of Criminal Procedure against an order passed by the learned XXIII M.M. Saidapet, Chennai acquitting the accused in C.C.No.6585 of 2002 for offence under Section 138 of N.I. Act dated 08.12.2006.

For Appellant : Mr.R.Ganesh Kumar

For Respondent : Mr.N.Manokaran
(Amicus Curiea)

J U D G M E N T

The present appeal has been filed by the complainant against the order of acquittal passed in C.C.No.6585 of 2002 dated 08.12.2006 by the learned XXIII M.M., Saidapet, under Section 138 of the Negotiable Instruments Act.

2. For the sake of convenience, the appellant herein is referred to as the complainant and the respondent herein is referred to as the accused.

3. The sum an substance of the case is as follows:

3(i)The accused borrowed a sum of Rs.1,00,000/- (Rupees One Lakhs Only) from the complainant on 08.10.2001 and in order to discharge the debt, he issued Ex.P2, a cheque, dated 07.08.2002 for Rs.1,00,000/-(Rupees One Lakhs Only) drawn on the Bharat Overseas Bank, Adambakkam Branch. When the complainant presented the cheque through his bankers Indian Overseas Bank, Vellacherry Branch, Chennai - 600 006 on 08.08.2002, the said instrument was returned on 09.08.2002 for the reason of "insufficient funds". The same was intimated to the complainant by the bankers through Ex.P3.-Return memo. In this regard, the complainant issued Ex.P4, Legal notice on 14.08.2002 through Registered post with Acknowledgement calling upon the accused to make payment and the said notice was received by the accused on 17.08.2002. The Postal receipt and Acknowledgement have been marked as Ex.P5 and Ex.P6 respectively and the accused have sent Ex.P7, a reply dated 18.08.2002 denying the debt/liability of the said amount. Since the accused failed to repay the loan amount, the complainant filed C.C. No.6585 of 2002 on the file of learned XXIII Metropolitan Magistrate, Saidapet, Chennai against the accussed for the offence punishable under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to as " the N.I. Act.).

3(ii)When the above incriminating materials were put to the accused under Section 313(1) Cr.P.C., he denied the same as false. Three witnessess were examined on the side of accused wherein the D.W.1, Head Constable, Adampakkam Police Station, D.W.2, The Manager, Bharat Overseas Bank, Adambakkam Branch and D.W.3, The Assistant Manager, Bank of India, Mount Road Branch and marked Exs.D.1 to D.6.

3(iii)In order to prove the case of the complainant, the complainant himself examined as P.W.1 and and Exs.P.1 to P.8 were marked.

3(iv)After Considering the oral and documentary evidence on record and submissions made by both parties during the trial, the Magistrate acquitted the accused under Section 138 of the N.I. Act., on the ground that the complainant had failed to prove the case beyond reasonable doubt. Aggrieved by the acquittal of the accused from the charges under Section 138 of the N.I. Act., the present Criminal Appeal has been filed by the complainant.

4. The learned counsel appearing for the appellant would submit that the accused borrowed a sum of Rs.1,00,000/-(Rupees One Lakhs Only) on 08.10.2001 by executing Ex.P1 the promissory note. The accused after availing the said loan amount had failed to repay the same and on repeated requests and demands made by the complainant, the accused issued Ex.P2, a cheque dated 07.08.2002 for Rs.1,00,000/- (Rupees One Lakhs Only) drawn on the Bharat Overseas Bank, Adambakkam Branch, in favour of the complainant for clearing the debt borrowed by the accused. When the complainant presented the said cheque for encashment in Indian Overseas Bank, Vellacherry Branch, on 08.08.2002, it was returned for the reason of "insufficient funds" in the account of the accused. During the trial, the complainant clearly established the case before the lower Court as there was a

legally enforceable debt/liability under section 138 of N.I. Act, and there was a presumption under section 139 of N.I. Act, in favour of the complainant. However, the lower Court, without considering Exs.P1, promissory note executed by the accused and the accused had not rebutted the presumption available in favour of the complainant, has acquitted the accused on the ground that the complainant has failed to prove his case that the cheque in question has been issued for discharging legally enforceable debt.

5.It is further contended by the learned counsel for the appellant that the trial Court ought not have acquitted the accused based on the evidence of D.W.2, The Manager, Bharat Overseas Bank, Adambakkam Branch, through whom Ex.D5, Statement of Accounts of the accused from 01.01.2001 to 21.12.2001, had been marked which reflects that during the year 2001, a sum of Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand Only) had been credited to the accused Bank account from L.I.C. Housing Finance Ltd and subsequently, Rs.50,000/-(Rupees Fifty Thousand Only) had been debited from his account and credited to the Complainant's account. In view of the above, the Magistrate came to the conclusion that the amount of Rs.50,000/-(Rupees Fifty Thousand Only) has been given to the Complainant as commission in order to extend service for availing Loan of Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand Only) from L.I.C. Housing Finance Ltd. and the cheque in question had been given to the complainant only for security purpose for collecting the aforesaid amount even after the complainant deposing that the afore said amount was received for clearing old debit payable by the accused and the present cheque in question is for a different liability.

6. When the matter taken up for final disposal today, there is no appearance on behalf of the respondent despite notice served.

7. Since no one is appeared on the side of the respondent and this case is pending from the year 2007, this Court considered to dispose of the case on merits by appointing the learned Counsel Mr. N. Manokaran as amicus curiae to decide the matter.

8. The learned amicus curie, Mr. N. Manokaran would submit that while the promissory note was executed for Rs.1,00,000/- (Rupees One Lakhs Only) on 08.10.2001 with interest at 36% p.a, the interest amount would come to Rs.30,000/- (Rupees Thirty Thousand Only) for 10 months upto 07.08.2002. As per the case of the complainant, the total liability of Rs.1,30,000/- (Rupees One Lakhs and Thirty Thousand only) ought to have been received

by the complainant. However, the complainant has received the cheque in question only for principal amount. i.e. Rs.1,00,000/- (Rupees One Lakhs only) But, the interest amount of Rs.30,000/- (Rupees Thirty Thousand only) has not been collected by the complainant. In this regard, there was no proper explanation for having received a sum of Rs.1,00,000/- only (Rupees one lakhs only) without collecting interest as executed in the promissory note. Furthermore, on examining the witnesses on the side of accused, i.e. D.W.2, The Manager, Bharat Overseas Bank, Adambakkam Branch and D.W.3, The Assistant Manager, Bank of India, Mount Road Branch, it is seen that in the bank statement of the accused from 01.01.2001 to 31.12.2001, the amount of Rs.2,30,000/-(Rupees Two Lakhs and Thirty Thousand Only) has been disbursed through Bank of India, Mount Road Branch, on 16.06.2001 from the account of L.I.C. Housing Finance Ltd., which has been confirmed by D.W.2, the Assistant Manager, Bank of India, Mount Road Branch, before the trial Court and Rs.50,000/- has been debited in the account of accused for having paid the said amount to the complainant. Admittedly, the accused has obtained a loan of Rs.2,30,000/-(Rupees Two Lakhs and Thirty Thousand Only) from the Life Insurance Corporation Housing Finance Ltd. and on the very same day, a sum of Rs.50,000/- (Rupees Fifty Thousand only) has been debited in the account of accused and credited to the complainant's account. The complainant has submitted as to the credit transaction of Rs.50,000/- (Rupees Fifty Thousand only) in his account that the amount was paid by the accused to clear old debit payable by him. But, The complainant has not proved the same before the trail Court by showing proper records.

9. Considering the aforesaid fact and circumstances of the case and submissions made by the learned counsel appearing for both side during the trial, the trial Court has arrived at a conclusion that the amount of Rs.50,000/- (Rupees Fifty Thousand Only) was given to the complainant in order to extend service, for having availed the loan amount of Rs.2,30,000/- (Rupees Two Laksh Thirty Thousand only) from L.I.C. Housing Finance Ltd. Further, it was stated that the complainant demanded additional commission from the accused for having extended service to avail loan from L.I.C. Housing Finance Ltd. Hence, the accused lodged a complaint on 03.05.2002 before the Adambakkam Police Station, against the complainant for demanding additional commission. The said complaint was marked as Ex.D2 and the receipt of complaint given by the Police Station was marked as Ex.D3. But, the complaint was closed on the instruction that both parties may approach before the Court to settle the matter. In this regard, Ex.D4, a copy of attestation in Register was marked before the trial Court on the side of the accused.

10. It is also relevant to note that the Complainant has shown a sum of Rs. Rs.67,641/- (Rupees Sixty Seven Thousand and Six Hundred and Forty One Only) in his Income tax return. In this regard, the complainant had not submitted proper explanation from whom the said amount was received. Further, there was no money transaction in the account of accused for having received the loan amount from the complainant. Hence, the trial Court has finally decided that out of total Commission, Rs.50,000/-(Rupees Fifty Thousand Only) has been received from the accused as Commission. Hence, on a perusal of the entire evidence placed before the trial Court and submissions made by both parties during the trial, the accused clearly established the case that there was no legally enforcible debit in favour of the complainant.

11. Above all, it is well settled that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was recorded by the Appellate Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 held that in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Honourable Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that an order of acquittal need not be interfered with by the higher Courts unless there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

12.Having regard to the above parameters laid down by the Honourable Supreme Court in the above decisions and considering the facts and circumstances of the case, this Court is of the view that the order of acquittal recorded by the Court below does not suffer from any legal infirmity warranting interference by this Court. Accordingly, the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

lbm

To

1. The learned XXIII M.M. Saidapet,
   Chennai

2. Do Thro The Chief Metropolitan Magistrate,
   Egmore, Chennai-8.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Ganesh Kumar, Advocate, S.R.No.83114

Crl.A.No.221 of 2007

MG(CO)
CS/04/02/2019