IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.08.2018

Pronounced on : 22.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl A No.741 of 2007

Dr.R.Jagan ... Appellant/Complainant

Vs.

J.Vijayalakshmi ... Respondent/Accused

Prayer : This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment dated 30.11.2006 in Crl.Appeal No.375 of 2005 on the file of the Additional District and Sessions Court/FTC No.2, Coimbatore.

For Petitioner : Mr.R.Prasanan

For Respondent : Mr.G.Ponnambala Thiyagarajan

ORDER

Heard the learned counsel on either side.

2.The appellant Dr.Jegan is the complainant in CC No.102 of 2003 on the file of the Judicial Magistrate No.1, Pollachi. The private complaint was filed under Section 200 of Cr.PC for punishing the respondent herein for the offence under Section 138 of the Negotiable Instruments Act. According to the complainant, the respondent herein availed a loan of Rs.1.00 lakh from complainant's proprietary concerned namely, South India Finance and executed a promissory note. She availed one more lakh on 12.03.1998 and executed one more promissory note. She paid a sum of Rs.2,000/- in respect of these two transactions and thereby acknowledged her liability.

3.The respondent towards discharge of her loan liability issued two cheques dated 03.10.2002 drawn on State Bank of Mysore, Velandipalayam Branch and Canara Bank, Pollachi Branch favouring the complainant. Both the cheques were presented by the complainant with his banker namely, Tamilnadu Mercantile Bank, Pollachi on 03.10.2002. They were returned with the endorsements "insufficient funds" and "account closed" on 04.10.2002 and 11.10.2002. The complainant issued the statutory notice dated 16.10.2002 demanding payment of the cheque amounts. The accused received the same on 17.10.2002 and according to the appellant, the respondent gave a reply dated 31.10.2002 contending false averments. Hence, the complainant filed CC No.102 of 2003 before the Judicial Magistrate No.1, Pollachi.

4.The learned Trial Magistrate by judgment dated 01.08.2005 found the respondent guilty of the offence under Section 138 of the Negotiable Instruments Act and sentenced her to one year imprisonment and also directed her to pay a sum of Rs.4.00 lakhs towards compensation. Default sentence of two months of simple imprisonment was also imposed. The accused filed an appeal in Crl.Appeal No.375 of 2005 before Additional District and Sessions Judge/FTC No.2, Coimbatore. The appellate Court by judgment dated 30.11.2006 allowed the appeal and acquitted the respondent. Aggrieved by the same, this appeal has been filed.

5.The learned counsel appearing for the appellant reiterated the contentions set out in the grounds of appeal. He also pointed out that the appellate Court erred in interfering with the well considered decision of the learned Trial Magistrate.

6.It is seen that the complainant examined himself as P.W 3. The bank Managers were examined as P.W 1 and P.W.2. On the side of the complainant, Exs.P1 to P.13 were marked. The accused herself examined as D.W.1 and marked Exs.D1 to D6. Exs.D3 and D5 marked on the side of the accused are her income tax returns. The said returns inspire the confidence of this Court because they were filed much earlier to the issuance of the legal notice namely Ex.P.11 by the complainant. The income tax return have been filed by a qualified Auditor. They pertain to the financial years 1999-2000, 2000-2001 and 2001-2002. The return for the assessment year 1999-2000 reflects the loan transaction with the complainant. The return for the year 2000-01 also likewise reflects the transaction. But, it is seen from the return filed for the year 2001-2002 that a sum of Rs.10,33,717/- was incurred as a loan liability in favour of the Indian Oversees Bank. The entries regarding the complainant namely, Dr.Jegan and his proprietary concerned namely, South India Finance are absent in the returns filed for the assessment year 2001-02.

7.The pointed contention of the counsel for the respondent is that the loan availed from the complainant carried a high interest rate of 24% p.a. Therefore, the accused chose to avail loan from a Nationalised Bank for a far lesser rate of interest and that she liquidated the loan liability towards the complainant. Thus, the loan availed from the complainant was totally discharged. But then, according to the accused, the cheques that were obtained as a security when the loan was initially availed had been misused by the complainant.

8.The lower appellate court held that the income tax returns which were filed through a qualified Auditor and which were accepted by the department are sufficient to rebut the presumption raised against the accused under Section 139 of the Act. The appellate court came to the conclusion that the accused has proved the discharge of the loan amount by submitting her income tax returns.

9.The complainant chose to mark only the cheques issued by the accused and other basic documents that are necessary for maintaining the complaint under Section 138 of the Act. The complainant did not produce his income tax returns. The First Appellate Court therefore drew adverse inference against the complainant. This approach of the first appellate court cannot be faulted. According to the complainant, the loan transactions are of the year 1998. The complainant would claim that at the end of the third year, the accused gave a letter of acknowledgement for payment of Rs.2,000/- in respect of the loan transactions. But, according to the accused, this was a forged and fabricated documents. In view of the denial by the accused, the burden of proof squarely lay on the complainant that the accused acknowledged the loan liabilities before the expiry of the limitation period. The complainant miserably failed to do so.

10.In this case, the accused did not simply rely on the answers elicited during the cross examination of the complainant. On the other hand, she stepped into the witness box. The First Appellate Court chose to hold that the presumption raised under Section 139 of the Negotiable Instruments Act stood completely rebutted and that the accused was entitled to acquittal. This is an appeal against acquittal. When the accused has obtained an order of the acquittal at the hands of the court below, the same can be interfered with only if it can be shown that the judgment of acquittal rendered by the court below suffers from perversity.

The complainant could not establish that the judgment of the court below suffers from perversity. I find no ground to interfere. This appeal lacks merit. It stands dismissed.

Sd/-
Assistant Registrar(Insp.cell)

//True Copy//

Sub Assistant Registrar

Skm

To

1.The Judicial Magistrate No.1, Pollachi.

2.Do through The Chief Judicial Magistrate, Coimbatore.

3.The Additional District and Sessions Court/FTC No.2,
Coimbatore.

4.The Public Prosecutor,
High Court, Madurai.

Copy To: The Section Officer,
Criminal Section, High Court, Madras.

+1 cc to Mr.C.R.Prasanan, Advocate, Sr.No. 79819

Crl A No.741 of 2007

SV(CO)
CSL/26.04.2019