IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl. Appeal No.894 of 2007

V.Chandrasekaran
...Appellant/Respondent/Complainant

Vs.

R.Nagarajan
.. Respondent/Accused

PRAYER: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code to set aside the judgment dated 29.06.2007, passed by the VI Additional Judge, City Civil Court, Chennai in C.A.No.232 of 2005, reversing the judgment of learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No. 2309 of 2002, dated 13.05.2005 and call for the records.

For Petitioner : Mr.A.Mohamed Ismail

For Respondent : Mr.C.Samivel
(Legal Aid counsel)

J U D G M E N T

This appeal has been filed by the complainant against the order of acquittal order dated 29.06.2007 passed by the learned VI Additional Judge, City Civil Court, Chennai in C.A.No.232 of 2005, against the respondent for dishonour of cheque No.128981 dated 15.04.2002 for Rs.1,75,000/- drawn on Syndicate Bank, Fort St. George Branch, Chennai-9. The learned VII Metropolitan Magistrate, George Town, Chennai, convicted the respondent / accused in C.C.No. 2309 of 2002, dated 13.05.2005, against which the respondent preferred a Criminal Appeal in C.A.No.232 of 2005 on the file of the learned VI Additional Judge, City Civil Court, Chennai, and the Lower Appellate Court after an elaborate discussion, acquitted the respondent. Challenging the said acquittal, the appellant is before this Court.

2.The case of the prosecution is that the respondent / accused borrowed a sum of Rs.1,75,000/- from the appellant / complainant to meet his urgent expenses and towards repayment of the said loan amount, the respondent issued a cheque No.128981 dated 15.04.2002 for a sum of Rs.1,75,000/- drawn on Syndicate Bank, Fort St. George Branch, Chennai 600 009 in favour of the appellant. The appellant had presented the said cheque on 19.04.2002 for collection through the said Bank and the said cheque was returned on 19.04.2002 with an endorsement “funds insufficient”, with a return memo dated 19.04.2002 and the same has been marked as Ex.P1.

3.Immediately thereafter, within 15 days from the date of receipt of the information from the Bank, the appellant issued a legal notice dated 20.04.2002 calling upon the respondent / accused for payment of the above said cheque amount and the respondent received the legal notice on 23.04.2002 and the respondent had given a reply notice through his lawyer dated 04.05.2002 and the same was received by the appellant / complainant. Even after receipt of the statutory notice, the respondent has not paid the amount but gave evasive reply. Aggrieved by the same, the appellant / complainant filed a complaint under Section 138 and 142 of Negotiable Instruments Act r/w Section 200 of Cr.P.C.

4.The case was taken on the file of the learned VII Metropolitan Magistrate, George Town, Chennai and assigned C.C.No.2309 of 2002 and after serving copies, the Trial Court framed charges. Since the respondent denied the charges and claimed to be tried, on the side of the appellant PW1 was examined and exhibits Ex.P1 to Ex.P4 were marked. On the side of the respondent DW1 and DW2 were examined and exhibits Ex.D1 to Ex.D10 were marked.

5.After hearing the arguments of both sides and upon perusing the materials placed on records, the Trial Court convicted the respondent / accused for the offence under Section 138 of Negotiable Instruments Act on 13.05.2005 and sentenced him to undergo simple imprisonment for one year.

6.Against the said order of above conviction and sentence, the respondent / accused preferred a criminal appeal in C.A.232 of 2005 before the VI Additional Judge, City Civil Court, Chennai. The Lower Appellate Court after analysing the entire evidence and materials acquitted the respondent /accused. Aggrieved by the said acquittal order, the appellant has preferred the present criminal appeal in Crl.A.No.894 of 2007.

7.The learned counsel appearing for the appellant / complainant would submit that PW1's / Complainant's deposition makes it clear that the respondent issued a cheque No.128981 dated 15.04.2002 for a sum of Rs.1,75,000/- drawn on Syndicate Bank, Fort St. George Branch, Chennai 600 009 in favour of the appellant for legally enforceable debt. When the said cheque was presented for collection, the same was returned with an endorsement “insufficient fund”. The said cheque was issued to the appellant for the purpose of discharging the legally enforceable debts. The presumption under Section 139 of Negotiable Instrument Act, always is in favour of the holder of the cheque. However, the Lower Appellate Court arrived at a different conclusion based Ex.D1, the letter dated 10.02.2002, written by the complainant. It is further submitted that Ex.D1 - letter though written by the complainant to the respondent for discharge of legal liability relating to some other transactions, the same does not mean that the respondent has not issued the instrument for discharge of his liability relating to the loan borrowed for a sum of Rs.1,75,000/- and the Lower Appellate Court had erred in clubbing the present case with that of the other transactions and the same is non est in law, and accordingly, he prays for conviction.

8.Per contra, the learned legal aid counsel for the respondent would submit that even on a bare perusal of Ex.D1, it clearly reveals that there is no legally enforceable debt. The appellant had written a letter to the respondent on 10.02.2002, stating that the respondent was not regular in payment of interest as well as principal amount and claimed interest and balance amount of Rs.14,600/- only. It is the further submission of the learned counsel the main defence of the respondent is that the handwriting in the cheque other than the signature is in different style and the same is not that of his and contrary to the contents of the said letter, it is the submission of the learned counsel that, when the respondent is default in paying a sum of Rs.14,600/-, then advancing loan amount for a sum of Rs.1,75,000/- on 15.04.2002 to him by the complainant, is nothing but false.

9.The learned counsel would further submit that there are several transactions in between the appellant as well as the respondent, in which the said instrument was given as security only and at a later point of time, the respondent gave a blank cheque with his signature affixed and except that, nothing has been written in the said cheque and the same was misused by the appellant. The same was not accepted by the Trial Court; but the Lower Appellate Court acquitted the respondent which is practically valid. Hence, this Court need not interfere with the judgment passed by the Lower Appellate Court unless the same is perverse.

10.Heard the arguments advanced on either side and perused the materials placed on record.

11.In the light of the above submissions, now it has to be analysed as to whether the instrument issued by the respondent in favour of the appellant is with regard to repayment of loan amount to the tune of Rs.1,75,000/-?

12.Admittedly, the said instrument was issued on 15.04.2002 for discharge of alleged legally enforceable debt for a sum of Rs.1,75,000/- and there is no denial that the appellant issued a statutory notice and filed a complaint. However, the only issue before this Court is whether the respondent issued the instrument in favour of the appellant for the discharge of legally enforceable debt of Rs.175,000/-. No doubt that legal position makes it clear the presumption legally under Section 139 of Negotiable Instruments Act always is in favour of the holder of the cheque. However, the said presumption is rebuttable one and the appellant failed to establish the initial burden that there was a legally enforceable debt for which the instrument was issued.

13.In the present case, the appellant has stated in the complaint that the respondent borrowed a sum of Rs.1,75,000/- from the appellant to meet his urgent expenses and towards repayment of the said loan amount, the respondent issued the said instrument on 15.04.2002 for a sum of Rs.1,75,000/- to discharge the legally enforceable debt.

14.On a perusal of the typed set of papers, in particular, the judgment of the Trial Court would clearly indicates that the evidence of the respondent that the cheque issued on 15.04.2002 for the loan amount of Rs.1,75,000/- borrowed 15 days before of the date cheque, viz., the end of March 2002, was rejected by the Trial Court. However, the said evidence is contrary to the Ex.D1 letter. On a perusal of D1 letter, it clearly indicates that the appellant issued a legal notice to the respondent for claiming his principal as well as interest amount of Rs.14,600/- on 10.02.2002. In that letter, the appellant has warned the respondent for non payment of earlier loan amount. The deposition of the appellant is contrary to the Ex.D1 letter as the same is not acceptable that when the respondent is due in discharging the earlier debts, advancing a sum of Rs.1,75,000/- once again to the respondent by the appellant creates a credible doubt in the mind of this Court. Though the Trial Court also observed there was legally enforceable debt in general, however, convicted the accused and sentenced him to undergo one year simple imprisonment only on the ground that there was a instrument in favour of the appellant. On the contrary, the Lower Appellate Court had rightly arrived at a conclusion that presumption under section 139 of Negotiable Instrument Act is rebuttable one. The Lower Appellate Court acquitted the accused on the ground that there was no legally enforceable debt and further other documents, viz., Exs.D3 & D4, the promissory notes executed by the respondent in favour of the appellant shows that there are previous transactions in between the appellant and the respondent. The instrument in question was given as security which was later on used by the appellant which is non est in law. Hence, the appellant has not proved the case that there was legally enforceable debt and the cheque was given for discharging the liability and this Court do not find any error in the judgment passed by the Lower Appellate Court, acquitting the respondent.

15.Accordingly, this Criminal appeal stands dismissed. The judgment of the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No. 2309 of 2002, dated 13.05.2005 stands confirmed.

16.The State Legal Services Authority, High Court Campus, Chennai-600 104 is hereby directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to Mr.Mr.C.Samivel, the Legal Aid Counsel, as remuneration for conducting this Criminal Appeal.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The VI Additional Judge,
City Civil Court, Chennai.

2. The VII Metropolitan Magistrate,
George Town, Chennai.

3. Do Through The Chief Metropolitan Magistrate, Chennai

Copy to

1.Section Officer
Criminal Section
High Court of Madras

2. The Secretary
State Legal Services Authority
High Court Campus, Chennai 104.

+1 CC to Mr.C.Samivel, Advocate sr 89370.

Crl.A.No.894 of 2007

VGII(CO)
SP(18/02/2019)