

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 11.10.2018
PRONOUNCED ON : 17.12.2018
CORAM :
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.617 of 2010

M.Srinivasalu ... Appellant / Complainant
-Vs-
K.V.Chandrasekar ... Respondent / Accused

PRAYER: Criminal Appeal is filed under Section 378(1) of Criminal Procedure Code, praying to call for the entire records in connection with C.C.No.443 of 2007 on the file of the learned Judicial Magistrate No.IV, Vellore, Vellore District and set aside the judgment dated 24.08.2010.

For Appellant : Mr.E.Kannadasan
For Respondent : No Appearance

ORDER

The private complainant is the appellant herein. He has filed this Criminal Appeal against the order of acquittal under Section 255(1) Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act, passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in C.C.No.443 of 2007, dated 24.08.2010.

2.The appellant herein preferred a private complaint before the learned Judicial Magistrate No.IV, Vellore, Vellore District, alleging that the complainant and the accused were doing old gunny bag business and is that business transaction during April 2007, the accused was liable to pay a sum of Rs.70,000/- (Rupees Seventy Thousand Only) to the complainant and for that amount due the accused had issued Union Bank of India cheque numbered 463587 dated 02.05.2007 in favour of the complainant for a sum of Rs.70,000/- and the complainant presented the said cheque in his bank account in Indian Overseas Bank, Vellore, on 31.07.2010 for collection. It was returned unpaid due to "insufficient funds" in the account of the accused with the bank memo and hence, the complainant has issued a legal notice on 28.08.2007, calling upon him to pay the amount due on the cheque. The accused did not repay the amount so far. Therefore, the accused knowing well that there is no sufficient funds in his account has issued the cheque, hence, he had committed offence under Section 138 of the Negotiable Instruments Act.

3. Before the trial Court, the private complainant has examined himself as P.W.1 and marked Exs.P.1 to P.5. On behalf of the defence, none was examined and no document has been filed.

4. P.W.1 in the witness box deposed that the complainant and the accused were doing old gunny bag business and is that business transaction during April 2007, the accused was liable to pay a sum of Rs.70,000/- (Rupees Seventy Thousand Only) to the complainant and for that amount due the accused had issued Union Bank of India cheque numbered 463587 dated 02.05.2007 Ex.P.1 in favour of the complainant for a sum of Rs.70,000/- and the complainant presented the said cheque in his bank account in Indian Overseas Bank, Vellore, on 31.07.2010 for collection. It was returned unpaid due to "insufficient funds" in the account of the accused with the bank memo Ex.P.2 and hence, complainant issued a legal notice on 28.08.2007 calling upon him to pay the amount due on the cheque. The accused did not repay the amount so far. Therefore, the accused knowing well that there is no sufficient funds in his account has issued the cheque, hence, he had committed offence under Section 138 of the Negotiable Instruments Act and hence, liable to be punished and as the acknowledge of Ex.P.3 was not returned, the complainant lodged a complaint before the Postal Department and the Postal Department had acknowledged the receipt of Ex.P.3 by the accused on 31.08.2007. In spite of receipt of notice Ex.P.3 the accused has not come forward to either repay the amount or reply for the same.

5. During the cross-examination of P.W.1, certain answers have been elicited in the cross-examination to probabalise the suggestive case.

6. The accused has come forward with the specific case that both the appellant / private complainant and the respondent / accused are partners in running old gunny bag business and hence, what was given as surety namely, singed blank cheque has been misused by the complainant in lodging this complaint. Since the signature was admitted by the accused, the trial Court has rightly come to the conclusion that in view of the admission of the signature in Ex.P.1 cheque, the private complainant is entitled for presumption under Section 139 of the Negotiable Instruments Act.

7. To rebut the presumption, in the cross-examination it is elicited by P.W.1 that at the time of filing the complaint whether the statutory legal notice was served upon the accused or not? was not whispered in the complaint, after representation only in the witness box it was stated so by P.W.1. Furthermore, P.W.1 has admitted that in the cheque the signature is found to be in one ink, while the contents of the other found in the different ink with alteration with regard to the amount

namely, Rs.70,000/- and the rest was overwritten. Furthermore, with regard to the alleged borrowal of the said amount, there is an inconsistency between the pleading in the complaint as well as with P.W.1 in the witness box.

8.It is specifically suggested in the cross-examination that P.W.1 does not have financial capacity to lend a sum of Rs.70,000/- at the time of alleged hand loan, however, nothing has been stated or nothing has been produced before the Court to substantiate that he has lent the amount of Rs.70,000/- on the date. Ex.P.5 is the letter given by the Senior Superintendent of Post Offices, stating that the registered letter was served to the accused. Accordingly, notice was served upon him and hence, he has not given any reply notice therefor.

9.Taking into consideration of the answer elicited in the cross-examination, the learned trial Court has come to the conclusion that the respondent / accused has probalised his suggestive case that Ex.P.1 cheque was not issued for the pre-existing legally enforceable debt, based upon the admission in the cross-examination of P.W.1. Furthermore, taking into consideration of the relationship between the parties and also the suggestive answer elicited in the cross-examination of P.W.1, the trial Court has come to the conclusion that the suggestive case of the respondent is well prepared than the prosecution theory, accordingly, held that the presumption in favour of the appellant / private complainant stands rebutted and rejected the case of the complainant.

10.On consideration of the entirety of the suggestion and taking note of the answer elicited in the cross-examination, I do not find any reason to interfere with the said order of acquittal and accordingly, the same is liable to be confirmed.

11.In this view of the matter, this Criminal Appeal is dismissed. Therefore, the order of acquittal dated 24.08.201, passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in C.C.No.443 of 2007 is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.IV,
Vellore, Vellore District.

2.The Judicial Magistrate I,
Vellore.

3.Thro The Chief Judicial Magistrate,
Vellore.

4.The Additional Public Prosecutor,
Madras High Court, Madras.

CRL.A.No.617 of 2010

RJI (CO)
GN(24/01/2019)



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