

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2018

DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.56 of 2006

Sakuntala .... Appellant/Complainant

Vs

B.Sarala .... Respondent/Accused

Appeal filed under Section 378 of the Code of Criminal Procedure, against the Judgment and order of acquittal passed in C.C.No.359 of 2004 dated 07.11.2005 on the file of the learned Judicial Magistrate, Ootacamund acquitting the Respondent/accused for the offence under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.V.Purushothaman

For Respondent : Mr.M.Rajendran  
Legal Aid Counsel

JUDGMENT

The Appellant filed this Criminal Appeal against the Judgment and order of acquittal of the Respondent/Accused passed in C.C.No.359 of 2004 dated 07.11.2005 on the file of the Learned Judicial Magistrate, Otacamund for the offence under section 138 of the Negotiable Instruments Act.

2.The case of the Appellant /Complainant is as follows:

The Appellant/Petitioner Sakuntala in her sworn statement alleged that the Respondent/Accused borrowed a sum of Rs.1,50,000/- for his family expenses and in discharge of the said loan, the Respondent/Accused issued the impugned cheque dated 17.07.2004. When the Appellant/Complainant presented the

said cheque for encashment through his branch State Bank of India, Otacamand Branch, on account of "Insufficient Fund", the cheque was returned on 19.07.2004. On 11.08.2004, the Appellant issued Legal Notice to the Respondent/Accused. Hence the Appellant filed complaint under Section 138 of the Negotiable Instruments Act. On receipt of summons, the Respondent/Accused appeared and denied the acquisition against him.

3.To prove the case the Appellant/Complainant examined herself as PW1 and marked four Exhibits on her side. On the side of Accused no evidence was let in.

4.After appreciating the evidence, both oral documentary , the Learned trial Court held that the Accused found not guilty and acquitted him. Aggrieved over the same, the complainant prepared the present appeal.

5.The contentions in grounds of appeal as well as the submissions of the Learned Counsel appearing for the appellant are that, the Trial Court acquittal is contrary to Law, that the Trial Court ought to have seen that the Respondent was tried for offence punishable under Section 138 of Negotiable Instruments Act for having given a cheque for a sum of Rs.1,50,000/- and caused its dishonour ought not to have acquitted from the offences which is illegal and failed to consider the object and the very purpose of the special enactment which provides for the maximum punishment /imprisonment of one year and attracts compensation to the tune of double of the cheque amount. The Learned Trial Court Judge has not given any acceptable and special reasons for taking lenient view and the reason given by the Learned Judicial Magistrate for acquitting the Respondent/Accused is not valid either in law or on facts and circumstances of the case.

6.Per contra, the Learned Counsel for the Respondent/Accused contended that the Trial Court after analyzing the evidence of the appellant, arrived at a confusion that the cheque were not issued for the repayment of the loan amount alleged to have been received by the Respondent/Accused. Further the case of the Respondent is that, his sister Latha borrowed a loan of Rs.5,000/- from the appellant and due to the non payment, the Respondent issued a unfilled cheque infavour of the appellant in the year 1998 and the same was misused by the appellant using different inks in the impugned cheque. The Learned Counsel for the respondent also showed the impugned cheque which has different inks and alterations in the letters

written on the cheque. Further there is no specific dates and reasons for borrowing the money from the appellant either in the notice or in the complaint. Therefore, there was no truth that the appellant had advanced a sum of Rs.1,50,000/- to the respondent and prayed for dismissal of the appeal.

7.I heard Mr.V.Purushothaman, learned counsel for the appellant and Mr.M.Rajendran, learned Legal Aid Counsel appearing for the respondent and perused the entire materials available on record.

8.The point that arises for my consideration is:

a) Whether the Trial Court was justified in granting an order of acquittal of respondent for the charge under Section 138 of N.I. Act?

9.Before advertng to the merits of the matter, it would be appropriate to quote the provisions incorporated in Chapter XVII of the Negotiable Instruments Act (herein after NI Act) make a civil transaction to be an offence by fiction of law and with certain (rebuttable) presumptions that shall be drawn. Sections 138 to 142 are incorporated in the N.I. Act as Chapter XVII by the Banking Public Financial Institutions and Negotiable instruments Laws (Amendment) Act, 1981 (66 of 1988) which came into force with effect from 01.04.1989 and the N.I. Act was further amended by Act, 2002 (55 of 2002) which came into force with effect from 06.02.2003 incorporating new sections 143 to 147 in this Chapter XVII and further some of the existing provisions not only of the Chapter XVII, but also of other Chapters amended to overcome the defects and drawbacks in dealing with the matters relating to dishonour of cheques.

10.The object and intention of these penal provisions of Chapter XVII, in particular, Sections 138 and 139 (besides civil remedy), are to prevent issuing of cheques in playful manner or with dishonest intention or with no mind to honour or without sufficient funds in the account maintained by the drawer in Bank and induce the Payee/Holder or Holder in due course to act upon it. The remedy available in a Civil Court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee. Since a cheque that is dishonoured may cause uncountable loss, injury or inconvenience to the Payee due to the latter's unexpected disappointment, these provisions incorporated are in order to provide a speedy remedy to avoid inconvenience and injury to the Payee and further to encourage the culture of use of cheques and enhancing

credibility of the instruments as a trustworthy substitute for cash payment and to inculcate faith in the efficacy of Banking operations.

11. To fulfill the objective, the Legislature while amending the Act has made the following procedure:

In the opening words of the Section 138 it is stated:

"Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid,-----, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act (See Sec.143), be punished ----  
Provided, nothing contained in this section shall apply unless,-  
(a), (b); and (c) Explanation---(supra)."

"(i) Under Section 138 a deeming offence is created by fiction of law.

(ii) An explanation is provided to Section 138 to define the words "debt or other liability" to mean a legally enforceable debt or other liability."

(iii) In Section 139, a presumption is ingrained that the holder of the cheque received it in discharge of debt or other liability.

(iv) Disallowing a defence in Section 140 that drawer has no reason to believe that cheque would be dishonoured.

(v) As per Section 146 (new section) the production of the Banks slip or Memo with official mark denoting that the cheque has been dishonoured is prima facie evidence for the Court to presume the fact of dishonour of such cheque unless such fact is disproved by the accused."

12. Further the provision for issuing notice within fifteen days under Section 138 of N.I. Act after dishonour is to afford an opportunity to the drawer of the cheque to rectify his mistakes or negligence or in action and to pay the amount within fifteen days of receipt of notice, failing which the drawer is liable for prosecution and penal consequences. Reasonability of cause for non-payment is not at all a deciding factor. Mens rea is irrelevant. It is a strict liability incorporated in public interest. Availability of alternative remedy is no bar to the

prosecution. In the words - where any cheque, the word any suggests that for whatever reason if a cheque is drawn on an account maintained by him with a Banker in favour of another person for the discharge of any debt or other liability, the liability cannot be avoided in the event of the cheque stands returned by the Banker unpaid.

13. In the case on hand, Respondent/Accused contended that her sister Latha borrowed a loan of Rs.5,000/- from the appellant and for that, the Respondent issued a cheque in the year 1998 and after several years, the cheque in question was misused by the appellant by making material alterations in the cheque Exhibit P1. The Appellant was cross examined by the Respondent regarding the loan transaction as alleged in the complaint. In the cross examinations the appellant admitted that the date of loan amount given to the respondent was not specifically stated and the loan of Rs.1,50,000/- was given to the respondent on the same day of issuance of cheque and the respondent assured for repayment within three months from the date of issuance of cheque and the cheque was filled by the respondent itself. In further cross examination, the appellant deposed that on 16.7.2004 the Respondent/Accused issued the cheque and borrowed the loan amount from him and the loan transactions was held in his brother's house. Interestingly, on the next day i.e., on 17.07.2004, the appellant presented the cheque for collection in his bank against the three months time tenure. The very nature of loan transactions itself become meaningless, because, lending the loan amount of Rs.1,50,000/- on 16.07.2004 and presenting the cheque issued by the Respondent on the next day against the agreed three months tenure creates serious doubt. Further on careful reading of the complaint and sworn statement of the appellant, it is seen that the Respondent/Accused issued a cheque for the loan amount of Rs.1,50,000/- impliedly informing that he has sufficient cash in his savings account. But the cheque in question was put for collection on the next day raises the question of necessity in borrowing Rs.1,50,000/- from the appellant. Generally, no ordinary prudent man would issue cheque on the next day for repayment of the debt. Ordinarily in the criminal case, the onus is on the Appellant/Complainant to establish his case against the Respondent/Accused beyond all shadow of doubt. In fact an Accused can maintain silence. Furthermore, he need not enter into the witness box for the purpose of adducing evidence. Per contra, he can collect gather favourable points from the evidence of the complainant and can make endeavour before the trial Court to shake the case of the Appellant. Therefore, on proper analysis of the oral and documentary evidence, the learned trial Court came to the conclusion that the complainant had failed to prove the case.

14.For all the above, the Learned Trial Court had rightly arrived at the conclusion and thus for this Court with reference to the settled propositions in the factual matrix there is nothing to interfere with the Trial Court's acquittal judgment, but for dismissal of the appeal by confirming it.

15.In the result, the Criminal Appeal is dismissed by confirming the order of acquittal recorded by the trial Court in its judgment supported by reasons in its not finding the accused guilty for the offence under Section 138 of the Negotiable Instruments Act.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,  
Ootacamund.
- 2.-Do-Thro The Chief Judicial Magistrate,  
Nilgiris.

+lcc to M/S.V.Purushothaman, Advocate Sr.78556

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