



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.53 & 54 of 2014

C.Sundararajan ...Appellant in both the appeals

Vs.

S.Selvaraj ...Respondent in both the appeals

These Criminal Appeals filed under Section 378 Code of Criminal Procedure against the orders of acquittal dated 19.11.2013 passed by the learned I Additional Sessions Judge (FAC), Thiruvallur made in C.A.Nos.98 of 2012 and 29 of 2013 setting aside the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Thiruvallur, in C.C.No.92 of 2012 dated 19.11.2012 and & in C.C.No.264 of 2012 dated 05.04.2013 respectively.

For Appellant : Mr.V.Bhiman in both the appeals
For Respondent : Mr.T.Saravanan, Legal Aid Counsel
in Crl.A.No.53/2014

Mr.C.Venkatesan, Legal Aid Counsel
in Crl.A.No.54/2014

COMMON JUDGMENT

These criminal appeals have been filed against the orders of acquittal dated 19.11.2013 passed by the learned I Additional Sessions Judge (FAC), Thiruvallur made in C.A.Nos.98 of 2012 and 29 of 2013 setting aside the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Thiruvallur, in C.C.No.92 of 2012 dated 19.11.2012 and & in C.C.No.264 of 2012 dated 05.04.2013 respectively.

2 Complainant is appellant in the present appeals. Case of the appellant/complainant is that the respondent/accused borrowed a sum of Rs.3,00,000/- and Rs.5,00,000/- respectively for his urgent family needs and issued a cheques bearing Nos.928246 dated 15.06.2011 and 928259 dated 07.10.2011



respectively, drawn on ICICI Bank for discharging the said liability. When the complainant presented the same for collection, the above cheques were returned as "insufficient funds". Hence the complainant sent legal notices dated 08.12.2011 and 28.01.2012. The respondent/accused neither sent any reply to the said notices nor repaid the amount. Therefore, the appellant/complainant had filed private complaints before the Fast Track Court Magisterial Level, Tiruvallur, which were taken on file in CC.Nos.92 of 2012 & 264 of 2012.

3 Before the trial Court, on the side of the complainant P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P5 were marked and the accused examined himself as D.W.1 to prove his defence. The trial Court, after completion of trial, found the accused guilty of offence punishable under Section 138 of Negotiable Instrument Act and convicted him and sentenced to undergo one year rigorous imprisonment and to pay a compensation under Section 357 (3) Cr.P.C. for Rs.3,00,000/- in C.C.No.92 of 2012 by judgment dated 19.11.2012 and convicted him and sentenced to undergo one year rigorous imprisonment and to pay a compensation under Section 357 (3) Cr.P.C. for Rs.5,00,000/- in C.C.No.264 of 2012 by judgment dated 05.04.2013. Aggrieved against the above judgments of conviction, the accused had preferred two separate appeals in C.A.Nos.98 of 2012 and 29 of 2013 respectively, before the learned I Additional Sessions Judge, Tiruvallur. The lower appellate Court, after hearing both sides, by judgments dated 19.11.2013 had allowed both the appeals and set aside the conviction and sentence imposed by the trial Court.

4 Aggrieved against the judgment of acquittal dated 19.11.2013 made in C.A.Nos.98 of 2012 and 29 of 2013, complainant has preferred these two criminal appeals before this Court.

5 The learned counsel for the appellant/ complainant would submit that the respondent/accused borrowed a sum of Rs.5,00,000/- and Rs.3,00,000/- for his urgent family needs and on demand made by the appellant, the respondent issued cheques for discharging the said liability. When the cheques were presented for collection, the same were returned as "insufficient funds". Hence the appellant issued legal notices, for which the respondent neither come forward to repay the amount nor sent any reply for the same. Therefore the appellant filed private complaints and the learned trial Court had rightly appreciated the fact that non-sending of reply to the statutory notice will lead to presumption under Section 139 of NI Act, which favours the complainant, who is the holder of the cheques. When the respondent/accused admitted the signature found on the cheques, it is for him to prove that there is no legally enforceable debt. The respondent/ accused failed to rebut the

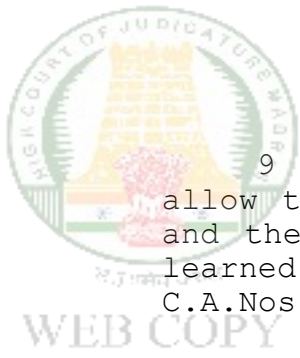


legal presumption by producing adequate evidence. In support of his contentions, the learned counsel has cited various decisions rendered by this Court as well as the Hon'ble Supreme Court. The lower appellate Court had failed to consider the above aspects, and erroneously reversed the judgment of conviction passed by the trial Court, which warrants interference of this Court.

6 Learned counsel appearing for the respondent/ accused would submit that in cross examination, the appellant/complainant admitted that he had not given the money at once, but, on various dates he gave the money, whereas, in the complaint he stated that he had given money at once. Further, the appellant had stated that in the presence of one Govindan, he lent money to the respondent/accused, but, the appellant failed to examine the said Govindan. The appellant has no means to lend money and he failed to prove his lending capacity. At one stage, he stated that he pledged his jewels, but he did not produce any receipts for the same. The appellant/complainant had failed to prove his case and the lower appellate Court had rightly appreciated all the above facts and acquitted the respondent.

7 Heard the learned counsel appearing on either side and perused the materials available on record.

8 On a perusal of the records, it reveals that in cross examination, the appellant/complainant stated that he had not given money to the respondent at once, but, on various dates he had given money, whereas, in the complaint he stated that he had given money at once. The appellant had stated that in the presence of one Govindan, he lent money, but, the appellant failed to examine the said Govindan, to substantiate his claim. The appellant had stated that he pledged his jewels and borrowed money from others and lent the same to the respondent/accused, but he did not produce any receipts for the same and he did not name any of the person from whom he obtained money to lend the respondent. The appellant/complainant had failed to prove his lending capacity by producing proof. Even though, the appellant had taken support of the decisions rendered by this Court as well as the Hon'ble Supreme Court, he failed to establish his claim by examining witnesses, which strengthen his case. In the absence of such evidence, the citations referred to by the learned counsel for the appellant are not made application for the present case on hands. It is well settled principle of law that High Court should not interfere in well-reasoned order of lower appellate Court, which has been arrived at after proper appreciation of evidence and presumption of innocence is further reinforced, reaffirmed and strengthened against acquitted accused by judgment in his favour.



9 In view of the above, this Court is not inclined to allow these appeals. Hence these criminal appeals are dismissed and the judgments of acquittal dated 19.11.2013 passed by the learned I Additional Sessions Judge (FAC), Thiruvallur, made in C.A.Nos.98 of 2012 and 29 of 2013, are hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

cgi

To

1. The I Additional Sessions Judge,
Fast Track Court, Thiruvallur.
2. The Judicial Magistrate, Fast Track Court, Thiruvallur,
3. The Chief Judicial Magistrate, Thiruvallur

+1cc to Mr.T.Saravanan, Advocate, S.R.No.56949

+1cc to Mr.C.Venkatesan, Advocate, S.R.No.56739

+2cc to Mr.V.Bhiman , Advocate, S.R.No.56990 & 56991

Cr1.A.Nos.53 & 54 of 2014

RSK(CO)
GSP(17/10/2018)