IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.446 of 2005

A.Lingam ...Appellant

-Vs-

G.Murugan ... Respondent

Prayer:

Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, against the judgment of the Learned Additional District and Sessions Judge (IV Fast Track Court), Chennai, dated 27.04.2005 made in C.A.No.228 of 2002.

For Appellant : Mr.G.R.Hari
for M/s.Ram And Ram

For Respondent : Mr.K.Srinivasan
Amicus Curiae

J U D G M E N T

The matter is today listed without E.B.

2. The appellant has filed this appeal against the judgment passed in C.A.No.228 of 2002 dated 27.04.2005 by the learned Additional District and Sessions Judge, IV Fast Track Court, Chennai.

2. The appellant is the complainant and the respondent is the accused in C.C.No.6683 of 2001. The case of the appellant is that he is a transport broker. The respondent knew the appellant for more than 2 years. After getting acquaintance with the appellant, the respondent had taken hand loans for various sums from the appellant to the extent of Rs.1,45,000/- to tide over the urgent business needs under promise to return the same within a short period. The respondent is running a business under the name and style of 'Sri Meenachi Transport'. The appellant believed the representation of the respondent and advanced the amount as requested.

3. Thereafter, when the appellant approached the respondent for return of money paid to him at the office address, the respondent drawn a cheque bearing No.276895 (Account No.1790) on Indian Overseas Bank, Choolai, for a sum of Rs.1,45,000/-, signed and issued the same to the appellant. Thereafter, the said instrument was presented for collection to the appellant's banker namely, Indian Overseas Bank, Wall Tax Road, Chennai on 08.10.2001. However, the said instrument was returned unpaid on 09.10.2001 with an endorsement “Account Closed”.

4.Immediately thereafter, the appellant issued a demand notice to the respondent on 12.10.2001 by registered speed post with proof of delivery to the accused both to his official and residential address. The said notice was received and acknowledged by the respondent on 13.10.2001 and sent a reply notice dated 27.10.2001 with untenable grounds. Hence, the appellant filed the complaint initiating proceedings under Section 138 of the Negotiable Instruments Act against the respondent before the lower court.

5. On the side of the appellant/ complainant three witnesses were examined as P.W.1 to P.W.3 and 14 documents were marked as exhibits as Ex.P1 to Ex.P14. On the side of the respondent/ accused three witnesses were examined as D.W.1 to D.W.3 and 3 documents were marked as exhibits as Ex.D1 to Ex.D3.

6. After trial, the Trial Court convicted the respondent/ accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo 9 months Rigorous Imprisonment and to pay a sum of Rs.2,90,000/- as compensation in default to undergo simple imprisonment for three months. The Trial Court further directed that out of the said sum of Rs.2,90,000/-, a sum of Rs.1,70,000/- shall be given to the appellant/ complainant and the balance sum of Rs.1,20,000/- shall go to the State.

7.Aggrieved the said conviction and sentence, the respondent filed an Appeal before the lower Appellate Court in C.A.No.228 of 2002 on the file of Additional District and Sessions Judge, Fast Track Court No.IV, Chennai. The lower Appellate Court, after elaborate trial, acquitted the respondent/ accused on the ground that the appellant/ complainant did not establish his case. There was no legally enforceable debt in favour of the appellant/complainant. Aggrieved the said order of acquittal, the present Criminal Appeal has been filed.

8. Though notice was ordered and proof of service has been filed, the respondent has neither appeared in person nor entered

appearance through counsel. Hence, this Court considering the pendancy of the case, since the appeal is of the year 2005, appoints Mr.K.S.Srinivasan, learned Advocate as Amicus Curiae to contest the case on behalf of the respondent.

9. The learned counsel appearing for the appellant would submit that the respondent issued a cheque bearing No.276895 (Account No.1790) drawn on Indian Overseas Bank, Choolai, for a sum of Rs.1,45,000/-, in favour of the appellant. However, the said instrument when presented for collection to the appellant's banker namely, Indian Overseas Bank, Wall Tax Road, Chennai on 08.10.2001, was returned unpaid on 09.10.2001 with an endorsement "Account Closed". He would further submit that as per the statutory compliance, the appellant issued legal notice on 12.10.2001 by registered post with acknowledgment and the same was received by the respondent/accused on 13.10.2001.

10. The learned counsel appearing for the appellant would further submit that the said legal notice and acknowledgment card was marked as Exs.P4, P5, P6, P7 and P8. Thereafter, the respondent sent a reply notice on 27th October 2001 with untenable grounds. Since the respondent did not pay the amount, left with no other option, the appellant/complainant filed the complaint initiating proceedings under Section 138 of the Negotiable Instruments Act.

11. The learned counsel appearing for the appellant would further submit that the appellant in order to prove that there is legally enforceable debt in favour of the appellant, the appellant examined himself as P.W.1 and the Bank Managers of the drawer Bank and drawee Bank were examined as P.W.2 and P.W.3 on behalf of the appellant. Hence, the appellant has clearly established his case and the Trial Court rightly passed the conviction and sentence as against the respondent/ accused. However, the lower Appellate Court believing the words of the respondent, drawn rebuttable presumption and without any proper reason, arrived at a conclusion that the appellant did not establish his case that there was legally enforceable debt and acquitted the respondent, which is un-sustainable one. Accordingly, he prayed for allowing the appeal.

12. The learned Amicus Curiae appearing for the respondent/ accused would submit that admittedly Ex.P1 instrument was issued. On perusal of Ex.P1 instrument, the year mentioned in the instrument was in the year 19- and the appellant is employed under the respondent for past two years. In the year 1999, he left the business premises for taking care of his mother and handed over the instrument and other day to day expenditure to the appellant. After two years, the said cheque was misused and presented for collection and the same was established before the

Court by producing statement of accounts Ex.D1 and reply notice is marked as Ex.D2. On perusal of statement of accounts Ex.D1 and reply notice Ex.D2, earlier occasion, the appellant filed criminal complaint before the Guindy Police station. Thereafter, the respondent also filed compliant before Human Rights Commission, however all those disputed facts were not placed before the Court and the appellant deliberately suppressed the vital aspects before the lower court and the lower Court drawn inference in favour of the appellant and convicted the accused. However, the said conviction order was set aside by the lower Appellate Court on perusal of the documents and other relevant statement of accounts. Hence, there is no need for interference with the order of acquittal mechanically unless the order is perverse or against the principles of law.

13. Heard the rival submissions made on either side and perused the materials available on record.

14. On hearing the rival submissions, this Court has to consider whether there was legally enforceable debt in favour of the appellant and whether the respondent rebutted the presumption against the appellant.

15. Admittedly, on perusal of the entire records and evidence, the appellant presented the cheque bearing No.276895 drawn on Indian Overseas Bank. Though the drawer and drawyee Banks are one and the same. However, the branches are different. The appellant/complainant Bank is Walltax Road Branch and the respondent Bank is Choolai Branch. The instrument Ex.P1 signature is not disputed. However the other columns was filled up by the unknown person. There is dispute with regard to the filling up of other columns. However, it appears that the cheque Ex.P1 was presented in the year 2001. On close perusal of the statement of accounts, Ex.D2 reveal that the cheque bearing No.276894 issued on 21st February 2000 and the cheque No.276897 issued on 6th February 2000. The Ex.P1 instrument number is 276894. On perusal of the statement of accounts, the alleged instrument Ex.P1 issued only in between either February or March, 2000. The prior instrument and after instrument was issued between February and March . However, Ex.P1 instrument was presented only on 19.04.2001 after one year. The normal period of validity of instrument is only six months. However the present instrument was utilized and presented on 19.04.2001. It created doubt with regard to the issuance of cheque in favour of the appellant.

16. In view of the categorical position, this Court easily draw inference in favour of the respondent that the said instrument was not issued for legally enforceable debt.

Admittedly there is relationship inbetween the appellant and the respondent. Hence, the lower Appellate Court arrived at a conclusion that the instrument was not issued for legally enforceable debt. Hence this Court do not find any error in the order of the lower Appellate Court.

17. In this background, it is relevant to refer the decision of the Apex Court reported in 2008 (1) SCC 258 [K.Prakashan Vs. P.K.Surenderan]

> "22. It is now trite that if two views are possible, the appellate court shall not reverse a judgment of acquittal only because another view is possible to be taken. The appellate court's jurisdiction to interfere is limited. (See.M.S. Narayana Menon and Mahadeo Laxman Sarane Vs. State of Maharashtra) The High Court furthermore has not met the reasons of the learned trial Judge. It proceeded on the premise that the appellant had not been able to discharge his burden of proof in terms of Section 139 of the Act without posing unto itself a further question as to how the said burden of proof can be discharged. It furthermore did not take into consideration the legal principle that the standard of proof upon a prosecution and upon an accused is different.

18. Perusal of the above decision, makes it clear that the appellate court shall not reverse the judgment of acquittal unless the order of the lower appellate court is perverse or against the principles of law.

19.In the result, the criminal Appeal is dismissed. The judgment of the Learned Additional District and Sessions Judge (IV Fast Track Court), Chennai, dated 27.04.2005 made in C.A.No.228 of 2002, is hereby confirmed. Consequently connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

mfa/pri

To

1. The Additional District and Sessions Judge,
   IV Fast Track Court, Chennai.

2. The IX Metropolitan Magistrate, Saidapet, Chennai - 18

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MR(CO)
GMY(08/01/2019)