IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.A.No.171 of 2011

P.N.Sowrirajan ... Appellant/Complainant

Vs

S.Yoganandan ... Respondent/Accused

Prayer : Criminal Appeal filed under Section 378(4) Cr.P.C., praying to call for the entire records connected with the order passed by the learned I Additional District and Sessions Judge of Coimbatore in Crl.A.No.159 of 2009 dated 29.04.2010 and set aside the same and consequently confirm the order of conviction and sentence passed by the Judicial Magistrate No.II, Coimbatore in C.C.No.292 of 2007 dated 10.11.2009.

For Appellant : Mr.K.Thilageswaran
For Respondent : Mr.C.S.Saravanan

J U D G M E N T

This Criminal Appeal has been filed to call for the entire records in connection with the order passed by the I Additional District and Sessions Judge of Coimbatore, in Crl.A.No.159 of 2009 dated 29.04.2010 and set aside the same and consequently, confirm the order of conviction and sentence, passed by the Judicial Magistrate No.II, Coimbatore in C.C.No.292 of 2007 dated 10.11.2009.

2.For the sake of convenience, the appellant and the respondent will be referred to as the complainant and the accused respectively.

3.It is the case of the complainant that on 21.03.2004, the accused borrowed a sum of Rs.95,000/- as hand loan and towards the said liability, he gave a post-dated cheque (Ex.P1) bearing No.898679 dated 26.04.2006, drawn on South Indian Bank Ltd., Gandhipuram branch, Coimbatore; the complainant presented the cheque in his account with Central Bank of India, Siddhapudur branch, Coimbatore on 28.04.2006; the cheque was returned unpaid on the ground "account does not exist", which was intimated to the complainant on 11.05.2006; the complainant issued a statutory notice dated 22.05.2006 to the accused (Ex.P4) and the same was received by the accused, vide acknowledgment card (Ex.P5); since the accused did not pay the cheque amount, the complainant initiated a prosecution in C.C.No.292 of 2007 before the Judicial Magistrate No.II, Coimbatore against the accused under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act").

4.On the appearance of the accused, the copy of the complaint was furnished to him and when he was questioned under Section 251 Cr.P.C., he denied the accusation.

5.To prove the case, the complainant examined himself as PW1 and marked six exhibits.

6.When the accused was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On behalf of the accused, three witnesses were examined and ten exhibits were marked.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 10.11.2009, in C.C.No.292 of 2007 convicted the accused under Section 138 of the the NI Act and sentenced him to undergo six months simple imprisonment and pay fine of Rs.3,000/-, in default to undergo one month simple imprisonment. Challenging the conviction and sentence, the accused filed Crl.A.No.159 of 2009, in the Court of Session and the same has been allowed by the I Additional District and Sessions Judge, Coimbatore on 29.04.2010, aggrieved by which, the complainant has preferred the present appeal against acquittal, after obtaining special leave.

8.Heard Mr.Thilageswaran, learned counsel for the complainant and Mr.C.S.Saravanan, learned counsel for the accused.

9.It is the case of the complainant that the accused was known to him for a long time and that they were doing business in lathe; the accused represented to him that he urgently needed money for discharging a loan, that he had availed from the State Bank of Bikaner, for which, some dues have to be paid and requested a hand loan of Rs.95,000/-; on 21.03.2004, the complainant gave Rs.95,000/- as hand loan and towards the same, the accused issued the impugned cheque dated 26.04.2006, which when presented on 28.04.2006, was returned unpaid with the endorsement "account does not exist"; the complainant issued statutory notice dated 22.05.2006 (Ex.P4) and the same was received by the accused (acknowledgement card-Ex.P5); since the accused did not pay the cheque amount, the complaint has been filed.

10.In the cross-examination of the complainant, he has admitted that the accused was known to him for about 6 to 7 years. He has further admitted that he had borrowed money from Ashok Leyland Finance for purchasing a Yamaha bike, for which, the accused stood as guarantor. He has also admitted that arbitration proceedings have been initiated by Ashok Leyland Finance against him (complainant), in respect of the loan transaction. He has also admitted that he was doing business along with the accused till 2005.

11.To a specific question, as to whether he (complainant) knew that the accused had already discharged the mortgage loan with State Bank of Bikaner, the complainant replied that he was not aware of it. It was suggested to him that he (complainant) had stolen the signed cheque from the office of the accused, with which, the present prosecution has been filed, which suggestion, the complainant denied. It was further suggested to him that the accused had filed a Police complaint for the loss of the cheque and a copy of the FIR in B-9 Saravanampatti Police Station Crime No.734 of 2007 dated 24.08.2007, was strangely marked in the cross-examination of the complainant, though the complainant was neither the author nor was he, the Investigating Officer of the case.

12.Coming to the defence evidence, the accused examined one Govindan as DW1, Manager of Syndicate Bank, Coimbatore, to prove that Jayalakshmi, the mother of the accused had obtained a loan from Syndicate Bank, Coimbatore and had paid all the dues and the account was closed on 28.10.2003 vide (Ex.D1). The complainant rightly did not cross-examine this witness.

13.The accused examined one Rajesh (DW2), Legal Executive, Indusind Bank, Coimbatore, who has stated that Ashok Leyland Finance was the previous avatar of Indusind Bank; one Sowrirajan (complainant) had availed a vehicle loan for buying a Yamaha motorcycle, who had however defaulted, on account of which, arbitration proceedings has been initiated. In the cross-examination, this witness has admitted that the complainant has discharged the vehicle loan and there was no due from him. He has also admitted that in the arbitration proceedings, it was the complainant, who participated and the accused, though signed as a guarantor, did not participate.

14.Lastly, the accused examined himself as DW3. In his examination in-chief, he has stated that he had discharged all the loans with the State Bank of Bikaner, in 2003 itself. The statement of account of Jayalakshmi, mother of the accused was marked as Ex.D4. He has further deposed that he gave a complaint on 25.10.2006 to the police that the complainant had taken away his cheque and since, no action was taken, he filed a petition under Section 482 Cr.P.C. before the High Court, for a direction to the Police to register an FIR on his complaint, based on which, the Police registered a case in Crime No.734 of 2007 under Sections 420, 468, 471, 406 and 380 IPC against the complainant.

15.In the cross-examination, the accused has admitted that only one cheque leaf was stolen from him and that cheque leaf relates to his company Sindhu Forgings. He has further admitted that he closed the bank account of Sindhu Forgings in the year 1995, but did not return the unused cheque leaves to the bank.

16.The learned counsel for the accused submitted that the accused has discharged the burden under Section 139 of the the NI Act, by adducing positive evidence to the effect that, the impugned cheque was stolen by the complainant from him. He also contended that when the complainant himself had admitted that Ashok Leyland Finance has initiated arbitration proceedings for nonpayment of the equated monthly instalments for the two-wheeler loan, the possibility of the complainant giving a hand loan of Rs.95,000/- to the accused appears incredible.

17.Per contra, learned counsel for the complainant submitted that the accused was a close friend of the complainant and when the accused wanted money urgently, a loan of Rs.95,000/- was given, even without interest and that is why, the complainant accepted his post-dated cheque for the principal amount.

18.This Court gave its anxious consideration to the rival submissions.

19.It is a settled proposition of law that, when two views are possible on the evidence on record, the view favouring the accused merits consideration. In Rangappa Vs Sri Mohan [2010 (4) CTC 118], the Supreme Court has held that the burden under Section 139 of the the NI Act can be discharged by the accused by preponderance of probability and not beyond reasonable doubt. Bearing this legal principle in mind, this Court proposes to appraise the evidence on record in this case to find out, if any interference is required.

20.The facts admitted by both sides are that :

a)the complainant and the accused were good friends and were doing business for some time;

b) the accused is the proprietor of Sindhu Forgings and had an account with South Indian Bank Limited, Gandhipuram Branch, to which account, the impugned cheque relates to.

21.It is trite that, in an appeal against acquittal, when two views are possible on the evidences on record, the view favourable to the accused, merits acceptance. The appellate Court has considered the evidence of the complainant/P.W.1 and the accused/D.W.3 and has given a finding that the complainant was in deep debt during the relevant point of time and therefore, he would not have been in a position to give hand loan to the accused.

22.That apart, on a perusal of the records, it is seen that the complainant had earlier filed a similar prosecution in C.C.No.447 of 2002 against the accused, for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate Court No.II, Coimbatore, in respect of a cheque transaction of the year 2002. While that being so, it is indeed incredible for the complainant to have given the hand loan of Rs.95,000/- to the accused, in the year 2004.

23.Once bitten twice shy is the norm. It is indeed hard to believe that the complainant, having burnt his fingers once, was so naive to give another hand loan to the accused subsequently.

24.In such view of the matter, this Court does not find any infirmity in the order of acquittal, passed by the Sessions Court, warranting interference.

In the result, this Criminal Appeal is devoid of merits and stands dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya/mkn

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate No.II,
Coimbatore.

3.Do Thro The Chief Judicial Magistrate,
Coimbatore.

4.The Section Officer,
Criminal Section, High Court,
Madras -104.

5.The Public Prosecutor,
High Court, Madras.

Crl.A.No.171 of 2011

KK(CO)
GN(25/01/2019)