IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.109 of 2013

A.G.Arthanari .. Appellant

Vs.

K.Palanisamy .. Respondent

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records relating to the proceedings of the learned II Additional District and Sessions Judge, Salem in C.A.No.107 of 2011 dated 21.08.2012 reversing the judgment of the learned Judicial Magistrate No.3, Salem in S.T.C.No.40 of 2008 dated 29.10.2011 and set aside the same.

For Appellant : Mr.M.Devaraj

For Respondent : M/s.R.Sashe
for Mr.M.Guruprasad

J U D G M E N T

The appellant is the complainant and the respondent is the accused in this appeal.

2. The case of the appellant is that the respondent borrowed a sum of Rs.9,25,000/- for which he issued a cheque on 19.09.2007 for a sum of Rs.3,00,000/- drawn on HDFC Bank, on 20.09.2007 and another cheque had been issued for a sum of Rs.2,00,000/-. Subsequently, on 24.09.2007, for a sum of Rs.4,25,000/- the respondent had issued a cheque, and the appellant presented the cheque for collection, the cheque was returned. After the receipt of the notice, the respondent sent a false reply stating that he had not paid the amount mentioned in the notice. Therefore, respondent committed an offence under Section 138 of Negotiable Instruments Act, for which, the appellant filed a complaint before the Judicial Magistrate No.3 Salem, for the offence under Section 138 of Negotiable Instruments Act.

3. The trial Judge after completing the formalities and after the trial, convicted the accused under Section 138 of Negotiable Instruments Act against which the respondent herein filed an appeal before the Sessions Judge, Salem. The Lower Appellate Court, after hearing both the counsel and considering the facts set aside the conviction and sentence. Now, as against the same, the complainant has filed the present appeal before this Court.

4.Heard Mr.M.Devaraj learned counsel for the appellant and Mr.Guruprasad learned counsel for the respondent.

5.The learned counsel for the appellant would submit that the appellant and respondent are doing onion business and in that way the appellant knows about the respondent and the respondent, for his urgent need had borrowed a sum of Rs.9,25,000/- on different dates. For which the respondent issued 3 cheques on different dates and when the cheques were presented for collection the same were returned as dishonoured. Therefore, after sending statutory notice, after completing legal formalities, the appellant filed a complaint and the trial Court has found the respondent guilty. The Lower Appellate Court reversed the judgment of conviction though the Lower Appellate Court discussed that the respondent had not denied his signature found in the cheques and also held that the cheques belongs to him. Once the signature is not denied, then under Section 118 and 139 of Negotiable Instruments Act, the statutory presumption is that the cheque was issued for discharging legally enforceable debt and in this case the said presumption has not been rebutted. But, the Lower Appellate Court had given a wrong finding that the appellant has not proved his case.

6.Further, the Lower Appellate Court has given a finding that appellant had no means to lend a huge amount. Since the appellant is doing onion business, he has capacity to lend. Therefore, the Lower Appellate Court has not properly appreciated the evidence and applied the legal presumption. Therefore it warrants interference of this Court.

7.The learned counsel for the respondent would submit that though the respondent has stoutly denied the borrowal of money and also issuance of cheques and contended that when the appellant and respondent knew to each other and were doing onion business, he was closely associated with the respondent. During that time, misusing his position, the appellant had taken away the cheques and misused the cheques. The respondent has given explanation about the same soon after receiving the statutory notice, in his reply notice itself. Further, during the trial, the respondent has established that the appellant had no capacity to lend a huge amount.

8.Further, he demonstrated that during relevant point of time, the appellant had no sufficient ways and means or source to lend such a huge amount. Even the appellant himself admitted that during that period, the appellant had no such huge amount in his account. Further, he owed to pay amount to some other creditors and also he applied for vehicle loan and he himself was in debt and liable to pay some amount to the bank and other persons. Therefore, at that stage, he would not have been in a position to lend the money to the respondent. Therefore, the Appellate Court rightly found that the appellant had not proved the case to allow the appeal.

9.A perusal of entire records reveals that the appellant stated to have lent 9.25 laks to the respondent for which respondent issued 3 cheques on different dates that too with in one month. The appellant has not stated in his complaint that a specific date on which the respondent borrowed a sum of Rs.9,25,000/- and why he has given 3 cheques on different dates within one month for different amounts, which creates doubt in the minds of this Court. Further, even though the respondent has not denied his signatures in the cheques but he has denied the means of the appellant to lend such huge amount and execution of the cheques in favour of him. It is well settled law that presumption can be rebutted either through direct evidence or preponderance of probabilities. In this case the respondent though not denied the signatures in the cheque but from the oral and documentary evidence there is a doubt regarding issuance of cheques by the respondent in favour of the appellant as to whether cheques were issued for legally enforceable debt or liability. When two views are possible, the view which is favourable to the respondent/accused has to be taken into consideration and the benefit of doubt has to be extend to accused.

10.Therefore, the Lower Appellate Court rightly came to the conclusion that the respondent has rebutted the presumption by preponderance of probabilities. When the burden is on the appellant to prove his case, the appellant has not proved beyond reasonable doubt and the transaction itself is disputed by the respondent. Since appellate Court is fact finding Court and it has independently re appreciated entire evidence and came to the conclusion that appellant has not proved the case beyond reasonable doubt. Normally this Court will not interfere with the judgment of the acquittal unless compelled circumstances warrants. In this case, there is no such compelled circumstances shown to interfere with the judgment of the Lower Appellate Court. There is no merit in the appeal and the appeal is liable to be dismissed.

11.Hence, the criminal appeal is dismissed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To
1. The II Additional District and Sessions Judge, Salem.

2. The Judicial Magistrate No.3, Salem.

+1 cc to Mr.M.Devaraj, Advocate Sr.No.58333
+1 cc to mr.M.Guruprasad, Advocate Sr.No.59397

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CSL/02.08.2019