

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.75 of 2013 and
Crl.M.P.No.2027 of 2018

V.Krishnan ...Appellant/Respondent/Complainant

Vs.

J. Srinivasan ...Respondent/Appellant/Accused

Prayer: This Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure to call for the records and set aside the order of acquittal dated 13.11.2008 in C.A.No.28 of 2008 passed by the Principal Sessions Judge, Vilupuram and consequently confirm the order dated 31.03.2008 passed in C.C. No.406 of 2003 by the Judicial Magistrate, Thirukoilur.

For Appellant : Mr.S.Jerald Lenin

For Respondent : Mr.G.Purushothaman

JUDGMENT

The Criminal Appeal has been filed by the appellant to call for the records and set aside the order of acquittal dated 13.11.2008 in C.A. No.28 of 2008 passed by the learned Principal Sessions Judge, Vilupuram and consequently confirm the order dated 31.03.2008 passed in C.C. No.406 of 2003 by the learned Judicial Magistrate, Thirukoilur.

2. The case of the complainant/appellant is that the respondent borrowed a sum of Rs.55,000/- from him and for which, he issued a cheque on 08.05.2000 bearing number 386246. Since, he has not repaid the amount, the appellant presented the cheque in central Co-operative Bank, Villupuram District and it was sent to Indian Bank, Adyar Branch for collection on 16.05.2003 and the said cheque was returned as 'no sufficient fund to honour the cheque' along with a return memo. Subsequently, the appellant issued a legal notice on 29.05.2003, to the respondent requesting him to pay Rs.55,000/- within 15 days. But the respondent neither sent reply nor repaid the amount. For which, the appellant has filed a complaint before the Judicial

Magistrate, Thirukoilur in C.C. No.406 of 2003 for dishonour of cheque under Section 138 of Negotiable Instruments Act, against the respondent herein.

3. The learned Judicial Magistrate, Thirukovilur, after hearing the arguments found the respondent guilty and imposed a sentence to undergo Simple Imprisonment for a period of three months under Section 138 of Negotiable Instruments Act, and to pay a compensation of Rs.55,000/- to the complainant under Section 357(3) Cr.P.C., in default to pay the compensation, the accused shall also undergo Simple Imprisonment for a period of one month. Against which, the respondent/accused filed an appeal before the learned Principal Sessions Judge, Vilupuram in C.A. No.28 of 2008.

4. The learned Principal Sessions Judge, Vilupuram, after hearing both sides allowed the appeal and acquitted the respondent/accused thereby setting aside the Judgment passed by the learned Judicial Magistrate, Thirukoilur. Hence, the appellant/complainant has filed the present Criminal Appeal.

5. The case of the appellant/complainant is that the respondent/accused borrowed a sum of Rs.55,000/- from him and for which, he issued a cheque on 08.05.2000. Since, he has not repaid the amount, he presented the cheque in Central Co-operative Bank, Villupuram District and it was sent to Indian Bank, Adyar Branch for collection on 16.05.2003 and the said cheque was returned as 'no sufficient fund to honour the cheque' along with a return memo. The respondent/accused has issued the cheque to the complainant after having known that he has no sufficient fund to honour the cheque.

6. The learned counsel for the appellant would submit that P.W.1 has deposed to the effect that the accused/respondent has borrowed a sum of Rs.55,000/- from him as debt. Ex.P.1 is the cheque. He has presented the cheque in Indian Bank for collection and the same was returned as 'no sufficient fund in the account' of the accused. Ex.P.2 is the return memo. He has issued a legal notice to the respondent/accused in this regard and the same is marked as Ex.P.3. The said notice was acknowledged by the respondent/accused and the acknowledgment card is Ex.P.4. He has issued a rejoinder and the copy of rejoinder is Ex.P.5. Ex.P.6 is the acknowledgment card for acknowledging the rejoinder by the accused. The respondent/accused has issued the cheque to the complainant after having known that he has no sufficient fund in his account to honour the cheque. Hence, the accused is liable to be punished under Sections 138 and 142 of Negotiable Instruments Act and under Section 420 of IPC.

7. The learned counsel for the respondent would submit that the appellant/complainant has not stated the specific date on which when the respondent/accused has borrowed money from him. In document also, he has not shown the date of borrowal. According to the learned counsel for the respondent, there is no proof for the amount borrowed by the respondent as alleged by the appellant. Further, the respondent has no necessity to borrow money from the appellant and no notice has been served on the respondent for dishonour of cheque and thereby Section 138(b) of Negotiable Instruments Act is not complied with and the non compliance is fatal to the case of the complainant. Moreover, the respondent has issued the cheque to the appellant/complainant only as security for the debt of his brother Nataraj.

8. Heard both sides. Perused the materials available on record.

9. In order to prove the case of the appellant/complainant as many as 2 witnesses P.Ws.1 & 2 were examined and six documents viz., Exs.P.1 to P.6 were marked. The main defence taken by the respondent/accused is that no notice of dishonour of cheque was served on him. With regard to the plea of defence, that no statutory notice was served on the respondent/accused as required under Section 138 (b) of Negotiable Instruments Act, it is pertinent to note that subsequent to the dishonour of cheque - Ex.P.1, Notice - Ex.P.3 was sent to the accused and the same was acknowledged by the accused through Ex.P.4 (Acknowledgment Card). As such, the plea of non-issuance of statutory notice is not acceptable. Hence, from the depositions of P.Ws.1 and 2 and from the documentary evidence of Exs.P.1 to P.6, it is found that the complainant has proved the case beyond all reasonable doubts including the issuance and execution of cheque. Once initial burden is proved by the complainant, the onus has been shifted to the accused. No doubt, the presumption under Section 139 of the Negotiable Instrument Act, is rebuttable presumption. But, the respondent/accused has not rebutted the presumption, in the manner known to law.

10. Secondly, if the case of the respondent/accused is that he has issued the cheque/Ex.P.1 as security to the complainant for the debt of his brother Nataraj, he would have taken steps to get return of said cheque when the debt was discharged, for which, it was given as security. But the respondent/accused himself has deposed that he did not give any notice to the complainant for returning of the cheque and did not give any complaint to the Police Station against the complainant as he has received the cheque fraudulently. Which creates doubt in the case of the respondent/accused. Further, the respondent/accused himself has deposed that he has issued the

cheque to the complainant and the signature therein is that of him. Under these circumstances, the defence set up by the respondent/accused cannot be accepted.

11. In the result, the Criminal Appeal is allowed and the order of acquittal dated 13.11.2008 in C.A.No.28 of 2008 passed by the Principal Sessions Judge, Vilupuram, is set aside and consequently, the order dated 31.03.2008 passed in C.C. No.406 of 2003 by the Judicial Magistrate, Thirukoilur shall stand confirmed. The trial Court/learned Judicial Magistrate, Thirukoilur is directed to proceed with the matter further and secure the presence of accused to undergo the remaining period of sentence, if any. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Jer

To

- 1.The Principal Sessions Judge,
Vilupuram.
- 2.The Judicial Magistrate,
Thirukoilur.

Copy to

The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.G.Purushothaman, Advocate Sr.67610

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Crl.A.No.75 of 2013
& Crl.M.P.No.2027 of 2018

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