

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.124 of 2009

Arokianathan

.. Appellant/Respondent/Complainant

Vs

Anandha Pharmacy,
Represented by its Proprietor,
Krishnamoorthy,
No.398, Villianoor Main Road (Opposite to Fish Market)
Nellithope, Pondicherry - 605 005.

.. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, praying to set aside the judgment of the learned Principal Sessions Judge, Puducherry in C.A.No.11 of 2005 and for restore the order of conviction passed by the learned Judicial Magistrate No.II, Puducherry, in S.T.R.No.11481 of 2000.

For Appellant :Mr.G.R.Hari
for M/s.Ram and Ram
For Respondent :T.Dhanya Kumar

J U D G M E N T

This appeal is directed against the judgment in C.A.No.11 of 2005, dated 19.10.2004 on the file of the learned Principal Sessions Judge, Puducherry, wherein the conviction and sentence passed against the respondent by the learned Judicial Magistrate No.II, Puducherry, in S.T.R.No.11481 of 2000 is set aside.

2. The facts of the case is as follows:

The case of the complainant is that in order to discharge his debt the respondent had issued a cheque dated 10.10.1999 in serial No.017058 of Corporation Bank, Puducherry for Rs.2,16,000/- (Rupees Two Lakhs and sixteen thousand only) to the appellant.

3. On 12.10.1999, when the cheque was presented for collection by the respondent in his bank (Syndicate Bank, Pondicherry), it was returned as unpaid by mentioning the reason "insufficient funds". For which memo had been issued by

bank. So the respondent issued a statutory notice on 16.10.1999, demanding to pay the cheque amount within fifteen days. After receiving the statutory notice on 21.10.1999, the respondent issued a reply notice denying the allegation levelled against him. Thereafter, the appellant approached the learned Judicial Magistrate No.II, Pondicherry for initiating action against the respondent and prayed to convict the respondent for the offences punishable under Section 138 of Negotiable Instruments Act.

4. In the trial Court, the complainant/appellant was examined as PW.1. One Jayalakshmi, Officer of the Corporation Bank, Pondicherry Branch was examined as PW.2. Besides six documents were marked as Ex.P1 to Ex.P6. On the side of the respondent he himself examined as DW.1 and three documents were marked as Ex.D1 to D3.

5. On considering the evidence, the learned Judicial Magistrate No.II, Pondicherry, found the respondent guilty for the offences under Section 138 of Negotiable Instruments Act and sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.5,000/- i/d to undergo simple imprisonment for four months.

6. Aggrieved by the said judgment, the respondent preferred the appeal before the learned Principal Sessions Judge, Pondicherry, in which he prayed to set aside the conviction and sentence passed by the learned Judicial Magistrate No.II, Pondicherry.

7. At the end of enquiry, the learned Principal and Sessions Judge allowed the appeal and set aside the conviction and sentence awarded to the respondent. Now against the said judgment, the appellant preferred this Criminal Appeal before this Court, through which he prayed to set aside the order passed by the learned Principal Sessions Judge, Pondicherry, and for restoring the judgment of the learned Judicial Magistrate No.II, Pondicherry..

8. On going through the judgments it is known that the Principal Sessions Judge came to the conclusion that before the trial Court, the present appellant have not proved the fact that the appellant is having capacity to lend a sum of Rs.2,16,000/- as a loan amount to the respondent. Further held that the documents filed by the respondent disclosed that the said cheque pertaining to the case was stolen away from the custody of respondent before presenting the same in the bank.

9. In this regard, the learned counsel appearing for the appellant made submission before this Court that the paper publication by the respondent mentioning the theft of cheque was published is an after thought. For which the respondent when he was examined as RW.1 admitted in his cross examination that only after receiving the statutory notice, the paper publication was effected. Further, the appellant counsel submits that a legal presumption raised under Section 139 of Negotiable Instruments Act is not properly handled by First Appellate Court, hence, he prays to set aside the judgment rendered by the Principal Sessions Judge, Pondicherry.

10. On the other hand, the learned counsel appearing for the respondent would submit that the respondent is the servant working under the appellant. In the course of business transactions, the respondent issued a blank cheque to the appellant. In the said circumstances, due to the some other disputes, the appellant got angry against the respondent purposely filing the cheque and submitted the same for collection. Thereby, the stand taken by the appellant is not proved through the reliable and cogent evidence.

11. Considering either side submissions, it is an admitted fact that the signature found in the cheque in dispute is belongs to the respondent. In the reply notice dated 27.10.1999 sent by the respondent, he clearly admitted as the signature found in the cheque belongs to him. Further in Ex.D1, which is the letter given by the accused to the bank in respect of missing the cheque dated 01.09.1999, he clearly admitted his signature. Further, it is admitted fact the cheque has been issued for the amount of Rs.2,16,000/-.

12. In the said circumstances, since the signature found in the cheque is admitted by the accused according to Section 139 of Negotiable Instruments Act, it is the duty of the respondent to prove that the said cheque has not been issued for discharging the legally enforceable debt. For which, probable evidence is necessary. At the time of giving evidence as RW.1, the respondent deposed that the blank cheque which was kept in Pharmacy was stolen away by the appellant. If the said evidence is really true, nothing has prevented him to lodge a complaint before the Police Station against the appellant. So non lodging of complaint shows the respondent has not approach this Court with clean hands. But, in this case after receiving the statutory notice dated 16.10.1999, the respondent made a paper publication in which he mentioned the cheque which was marked as Ex.P1 in this case was stolen away from his Pharmacy.

13. On 01.09.1999, he gave a letter to the bank for stopping payment in respect of the cheque pertaining to this

case. The letter given by the respondent to the bank shows before 40 days from the date of cheque he send a letter to the bank for stop payment of the cheque. On going through the letter given by the respondent to the bank, it appears that on 01.09.1999 itself, he informed the bank that the cheque bearing Nos.17055 and 17058 were stolen away. So the probable rebuttal evidence let in by the respondent is proved that the cheque has not been issued in a manner stated by the appellant.

14. In support of the stand taken by the learned counsel appearing for the appellant, he relied upon the judgment reported in (2015) 8 Supreme Court Cases 378, in T.Vasanthakumar Vs. Vijayakumari, in which the Hon'ble Apex Court held as follows:

"It may be noted that the cheque was dishonoured because the payment was stopped and not for any other reason. This implies that the accused had knowledge of the cheque being presented to the bank, or else how would the accused have instructed her banker to stop the payment."

15. The learned counsel appearing for the appellant relied upon the another judgment reported in (2010) 11 Supreme Court Cases 441, in Rangappa Vs. Sri Mohan, in which the Hon'ble Apex Court held as follows:

"The bare denial of the passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption, the defendant has to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist."

16. Considering the observation of the said judgment in this case also the defence taken by the respondent is probable to accept his case. If the cheque is not stolen away as stated by the appellant, it is not necessary for the respondent for giving letter to the bank for not honouring the cheque. Even ordinary prudent in the said situation going to take stands either by lodging the complaint before by the Police or by giving letter to the bank to not honour the cheque. Moreover, the relationship between the appellant and respondent clearly establish that may be the chance for stealing the cheque from

the custody of the respondent. According to the stand taken by the respondent the dispute has arisen prior to 01.09.1999 but in the cheque pertaining to this case the date was mentioned as 10.10.1999. So after arising the dispute it is impossible in issuing the cheque to appellant.

17. Hence, this Court finds that there is no illegality or infirmity and perversity in the findings given by the trial Court.

18. The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Puducherry.
2. The Principal Sessions Judge,
Puducherry.
- 3 -do-thro The Chief Judicial Magistrate, Puducherry
4. The Record Clerk,
Criminal Section,
High Court, Madras.

+1cc to M/s.T.Dhanyakumar, Advocate Sr.No.37174

GP(CO)
sm:6.8.2018

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