



IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Reserved on : 27.04.2018

Pronounced on : 22.06.2018

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CORAM:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.A.No.25 of 2009

Subramani @ Subramanian

...Appellant

versus

Rahim @ A.K.Rahim Basha

...Respondent

Prayer: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure to set aside the Judgment of learned VII Metropolitan Magistrate, George Town, Chennai dated 21.11.2008 in C.C.No.759 of 2008 and convict the respondent/accused for the offence under Section 138 of Negotiable Instruments Act.

For Appellant :Mr.J.Sudhakaran

For Respondent :M/s.M.Jayapal Rajan &
P.Prakash Raaj

JUDGMENT

This Appeal has been filed by the complainant against the Judgment of acquittal passed by the VII Metropolitan Magistrate, George Town, Chennai in C.C.No.759 of 2008 dated 21.11.2008.

2. The appellant herein has filed a private complaint stating that the respondent herein borrowed a sum of Rs.1,00,000/- on 27.02.2006 and with a view to discharge the said debt, he issued two cheques dated 18.10.2007 for Rs.50,000/- each. The appellant herein has presented the said cheques in the bank on 18.10.2007 for encashment and the said cheques were returned as 'funds insufficient' in the respondent's account. Hence, the appellant has issued a statutory notice on 16.11.2007 calling upon the respondent to pay the cheque amount within 15 days from the date of receipt of the said notice. The respondent has received the said notice on 27.11.2007 and issued a reply notice on 30.11.2007 with false averments, but he did not pay the cheque amount. Hence, the appellant has filed a private complaint requesting the court to punish the respondent u/s.138 of the Negotiable Instruments Act. For the sake of convenience, the parties are referred to as described before the trial court.



3. Based on the said complaint, VII Metropolitan Magistrate, George Town, Chennai, has taken the case on file in C.C.No.759 of 2008 and issued summons to the accused. On appearance of the accused, the learned Metropolitan Magistrate has furnished the copy to the accused and questioned him with regard to the offence said to have been committed by him. The accused denied the same and pleaded not guilty. Thereafter, the learned Metropolitan Magistrate has tried the case.

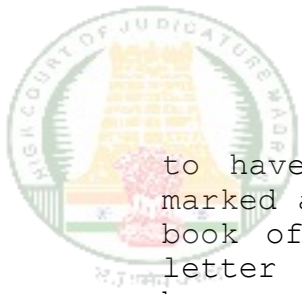
4. During trial, on the side of the prosecution, the complainant examined himself as PW1 and marked Ex.P1 to Ex.P9 as exhibits.

5. The evidence of the complainant, in brief, is as follows:

That on 27.02.2006, the accused, to meet out certain necessities borrowed a sum of Rs.1,00,000/- from the complainant and after repeated requests, the accused had issued two cheques dated 18.10.2007 for Rs.50,000/- each. The said cheques were marked as Ex.P1 and Ex.P2. The complainant has presented the said cheques in the bank on 18.10.2007 for encashment. The said cheques were returned on 23.10.2007 as 'funds insufficient' in the accused account. The returned memos and bank debit advices of the aforesaid two cheques were marked as Ex.P3 to Ex.P6 respectively. Thereafter on 16.11.2007, the complainant has issued a statutory notice calling upon the accused to pay the cheque amount. The office copy of the said notice has been marked as Ex.P7. The accused has received the said notice on 21.11.2007. The postal acknowledgment has been marked as Ex.P8. Instead of making payment, the accused has sent a reply notice (Ex.P9) dated 30.11.2007 with false averments. Hence, the complainant has filed a private complaint requesting the court to punish the accused u/s.138 of Negotiable Instruments Act.

6. The evidence on the side of the complainant was closed with PW1 and thereafter, the learned Metropolitan Magistrate has questioned the accused u/s.313 of Cr.P.C., with regard to the incriminating circumstances found in the evidence of the PW1. The accused denied the same and has stated that he is having evidence on his side. He examined himself as DW1.

7. DW1 has stated in his evidence that he has not borrowed any amount from the complainant and issued the cheques to discharge any debt. He further stated that his brother-in-law, one Babuji and his wife Mumtaj have borrowed a sum of Rs.1,00,000/- from the complainant on 12.03.2006 and executed a loan deed, in which, he signed as witness and subsequently, the complainant obtained the Ex.P1 and Ex.P2 cheques by force. He further stated that even before presenting those cheques in the bank, he has sent a letter requesting the complainant not to present the cheques and in spite of the same, he presented the cheque and filed a false case. He has marked a xerox copy of the loan deed said



to have been executed by the said Babuji and his wife and marked as Ex.D1. He has produced a xerox copy of the bank pass book of the said Babuji and marked as Ex.D2. A copy of the letter sent by him dated 12.10.2007 to the complainant has been marked as Ex.D3 and the postal acknowledgment signed by the complainant has been marked as Ex.D4.

8. The evidence on the side of the accused was closed with DW1 and thereafter learned Metropolitan Magistrate, heard both sides and found that the accused has not issued Ex.P1 and Ex.P2 cheques to discharge the debt and accordingly, he acquitted the accused by the Judgment dated 21.11.2008. Aggrieved by the same, the complainant has filed the present appeal.

9. Heard Mr.J.Sudhakaran, learned counsel for the appellant and M/s. M. Jayapal Rajan and P.Prakash Raaj, learned counsel for the respondent.

10. The points for consideration are as follows:-

1. Whether the learned Metropolitan Magistrate was right in acquitting the accused?
2. Whether this appeal has to be allowed ?

11. Point Nos.1 and 2:

The learned counsel for the appellant/complainant has submitted that the accused has admitted in his evidence that he has issued Ex.P1 and Ex.P2 cheques and as such, the presumption u/s.139 of the Negotiable Instruments Act will come into play. He further submitted that the accused has not rebutted the said presumption. He further submitted that the accused has admitted that he has issued Ex.P1 and Ex.P2 cheques as security for the loan obtained by his brother-in-law, Babuji and his wife Mumtaj, and therefore, he is liable to be punished u/s.138 of Negotiable Instruments Act. In support of the aforesaid contentions, he relied upon the following decisions:

1. Rames Vs. K. Sundar 2015 (2) MWN (Cr.) DCC 7 (Mad.)
2. A.N.Chandru Vs. K. Jayasankar, 2018 (1) MWN (Cr.) DCC 100 (Mad.)

12. Learned counsel for the respondent/accused, on the contrary, contended that Ex.D1 would clearly show that on 27.02.2006, the brother-in-law of the accused viz., Babuji and his wife/Mumtaj have borrowed a sum of Rs.1,00,000/- from the complainant and agreed to repay the said amount within three months with interest @ 24% p.a., In the said document, the accused has signed as one of the witnesses and that the complainant has admitted the execution of the said document. He further submitted that when the complainant advanced a loan to Babuji and his wife, only after obtaining a loan deed (Ex.D1), he would not have advanced a hand loan to the accused without getting any document. He further contended that



admittedly even before presenting the Ex.P1 and Ex.P2 cheques before the bank, on 12.10.2007 itself, vide Ex.D3, the accused has sent a letter requesting the complainant not to present the cheques till the payment made by the original debtors and only after receipt of the said letter, the accused/complainant has presented the Ex.P1 and Ex.P2 cheques and this would also support the case of the accused that he has issued Ex.P1 and Ex.P2 only as security. He further submitted that the accused has rebutted the presumption by adducing satisfactory evidence and hence, the trial court has rightly acquitted the accused and therefore, he requests to dismiss the appeal.

13. The case of the complainant is that on 27.02.2006, the accused borrowed a sum of Rs.1,00,000/- from him and after repeated demands, the accused has issued two cheques each for Rs.50,000/- dated 18.10.2007. According to the accused, he did not receive any amount from the complainant. His further case is that his brother-in-law Babuji and his wife Mumtaj have borrowed a sum of Rs.1,00,000/- from the complainant on 27.02.2006 and in order to evident the same, Ex.D1 loan deed was executed, in which, he signed as one of the witnesses. His further case is that subsequently on 12.03.2006, the complainant obtained Ex.P1 and Ex.P2 cheques by force from him by saying that since he stood as witness, he has to pay the amount. The accused has narrated these facts even in the reply notice itself.

14. During cross-examination, PW1 (complainant) has admitted that on 27.02.2006, he advanced a loan to one Babuji and his wife Mumtaj and they have executed a loan deed, in which, the accused signed as one of the witnesses. A xerox copy of the said loan deed has been marked through him as Ex.D1. A perusal of Ex.D1 would show that on 27.02.2006, the said Babuji and his wife have borrowed a sum of Rs.1,00,000/- from the complainant and they have agreed to repay the same with interest @ 24% p.a., within three months. So it is clear that the complainant gave a loan to one Babuji and his wife only by getting necessary document and that being so, the contention of the complainant that he gave a sum of Rs.1,00,000/- to the accused as hand loan, is not acceptable one.

15. It is also to be pointed out that PW1 has admitted in his cross-examination that he has received Ex.D3 letter and also admitted the Ex.D4 postal acknowledgment. Ex.D3 letter is dated 12.03.2007, in which, the accused has stated that on 27.02.2006, the said Babuji and Mumaj have executed a loan deed, in which, he has signed as witness. He also stated that after execution of the said loan deed, as security, the complainant has received two cheque leaves for Rs.50,000/- each from him. In Ex.D3, he requested the complainant not to present the aforesaid cheques and keep them as security until the borrowers repay the said amount. Ex.D4 postal



acknowledgment shows that the complainant has received the Ex.D3 letter on 18.10.2007 and that being so, the contention of the complainant that on 18.10.2007, Exs.P1 and P2 cheques were issued by the accused would not be true. After issuing Ex.D3 letter on 12.10.2007, the accused would not have issued Ex.P1 and Ex.P2 cheques on 18.10.2007.

16. It is also to be pointed out that the complainant not at all whispered about the receipt of Ex.D3 letter in Ex.P7 notice which was sent by the complainant on 16.11.2007. So it appears that in Ex.P7 notice, the complainant has wilfully suppressed the receipt of Ex.D3 notice.

17. The decisions cited by the learned counsel for the appellant/complainant would not be applicable to the facts of this case. In Rames Vs. K. Sundar (supra), the accused's wife borrowed money from the complainant by entering into a hire purchase agreement for purchasing a lorry wherein the accused stood as a guarantor. The borrower did not repay the amount. The complainant lodged a police complaint stating that the borrower has removed the tyres and engine from the lorry. During police enquiry, the matter was compromised and the accused agreed to pay a sum of Rs.1,35,000/- by issuing two cheques. But in this case, the accused never stood as guarantor. It is also not the case of the complainant that the accused stood as guarantor. His definite case is that the transaction with the Babuji and his wife Mumtaj and the transaction with the accused are totally independent transactions. Therefore, the aforesaid decision will not apply to the facts of the case.

18. In A.N.Chandru Vs. K. Jayasankar, (supra) the accused was an advocate. When he was questioned u/s.313 Cr.P.C., he denied very issuance of the cheque, but when he was examined as DW1, he has taken a stand that he issued the cheque as security. Under the said circumstances, this court has rejected the defence taken by the accused. But in the present case, the facts are totally different. From the very beginning, the accused has taken a consistent stand. On the contrary, the complainant has wilfully suppressed the material fact. He suppressed the fact that he has received the letter from the accused even before presenting the Ex.P1 and Ex.P2 cheques. A person who is coming to the court for seeking certain relief should come with clean hands. This court is of the view that the complainant has not come with clean hands. Therefore, this court is of the view that the trial court has rightly acquitted the accused. It cannot be said that the findings of the trial court are perverse. Hence, the present appeal is liable to be dismissed. Accordingly, these points are answered against the appellant/complainant.



19. In the result, the Criminal Appeal is dismissed. No costs.

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Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To
1.The VII Metropolitan Magistrate,
George Town,
Chennai.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai 8.

Copy to:The Section Officer,
Criminal Record Section,
High Court, Madras

SVN(CO)
sm:2.7.2018

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