IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.485 of 2009

Mubarak Ali ... Appellant/Complainant

Vs

Rama Dhingra ...Respondent/Accused

Prayer:

Criminal Appeal filed under Section 378 of Cr.P.C. Praying to set aside the judgment dated 24.06.2009 passed in C.C.No.21 of 2008 on the file of the Learned Judicial Magistrate I, Erode.

For Appellant : Mr. P. Anand, Legal aid Counsel

For Respondent : Mr. N. Manokaran

JUDGMENT

This appeal is directed against the judgment of Acquittal passed by the learned Judicial Magistrate No.I, Erode in C.C.No. 21 of 2008 dated 24.06.2009.

The case of the appellant/ complainant is as follows:

2) The appellant/complainant is running a Textile business at Erode. The respondent/accused is also doing the same business. During the course of business transaction, as per the accounts statement dated 26.10.2007, the respondent is liable to pay Rs.9,11,067/- towards the purchase of textile goods. In order to discharge the said liability, she issued a cheque for a sum of Rs.9,00,020/- bearing No. 588454 drawn at Canara bank, Chandni Chowk branch, New Delhi dated 01.11.2007. Believing the words of the respondent, the appellant presented the cheque on 03.11.2007 for enhancement in ICICI bank, Chennai. But, the above cheque was returned as unpaid for the reason "insufficient funds." The particulars of return was intimated to the appellant through the memo dated 21.11.2007 issued by the bank. So, on 04.12.2007, the appellant issued a legal notice reminding the respondent to pay cheque amount within a period of 15 days from the date of receipt of the said notice. The said notice was received by the respondent on 10.12.2007. the cheque in dispute, the return memorandum dated 08.11.2007, and the statutory notice

have been marked in the trial Court as Ex.P1 to Ex.P3. After receiving statutory notice the respondent/accused neither sent reply nor paid the cheque amount. Hence, the appellant has filed a complaint.

3) During the time of trial, the complainant examined himself as P.W.1, and marked 9 documents as Ex.P1 to Ex.P9.

4) When the incriminating material adduced on the side of complainant were put to accused under Section 313 Cr.P.C., the accused denied the same. However, she has marked the copies of the invoice as Ex.D1 to Ex.D3.

5) After considering the materials, the court below acquitted the accused from the charges on the ground that the cheque in dispute has not been issued by the respondent in order to discharge the liability. Particularly, it was held by the trial Court that the debt now stated by the complainant has not been proved. Now, challenging the above order of acquittal the present appeal has been filed.

6) I have heard Mr. P.Anand, learned Legal aid Counsel appearing for the appellant and Mr.N.Manokaran, learned counsel appearing for the respondet.

7) The learned counsel appearing for the appellant would content that before the trial court, in order to prove the liability of the respondent, the statement copy, income tax returns pertaining to the year of 2006-2007, 2007-2008, 2008-2009 have been marked as Ex.P5 to Ex.P7, he would further contend, those documents are created by the complainant, during the course of business transaction. The learned Trial Judge without believing the contents and genuiness of the above documents misconstrued the facts and acquitted the accused which is factually as well as legally not correct.

8) Per contra, the learned Counsel appearing for the respondent would submit that the particulars available from Ex.P5 to Ex.P9did not reflect the debt. Further, he would content that prior to the occurrence, the husband of the respondent and the owner of the complainant are business partners. During such time the owner of the complainant received the signed cheque from the husband of the accused. Now, after the dissolution of business, he handed over the same to the complainant, and filed false case against the respondent.

9) I have considered the rival submissions made on the either side and also perused the materials available on records carefully.

10) Initially, the Section 138 of Negotiable Instrumental Act has three ingredients; namely

> "(i) that there is a legally enforceable debt;
>
> (ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any dept or other liability which presupposed a legally enforceable debt;
>
> (iii) that the cheque so issued had been

returned to insufficient of funds."

11) In the above ssaid ingredients, it was admitted by either side that the cheque so issued had been returned due to insufficient funds. Accordingly, the third ingredient mentioned above is available in this case.

12) In respect to the other two ingredients, it is an admitted fact that the signature found in the cheque under dispute belongs to the respondent. So, automatically, the presumption under Section 138, 118(a) of Negotiable Instrument Act came into play, Reliance is placed in the case Mallavarapu Kasiviswesware Rao v. Thadikonda Ramulu Firm, wherein it was observed:

> "17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal."

13) Further in the judgment of RANGAPPA v. SRI MOHAN reported in 2010 11 Supreme Court Case 441 wherein it was observed,

> "We are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability."
>
> "Further, Section 139 is that of course the nature of the rebuttable presumption, it is open to the accused to raise an advance wherein the existence of the legal enforcement debt or liability can be contested. However, herein there can be no doubt that there is a presumption which favours the respondent/complainant."

14) Therefore, in order to rebutt the presumption, the duty is cast upon the accused to raise, and create suspicion circumstances over the case of complainant.

15) In this context, in this case while at the time of giving evidence the complainant has stated as at the time of purchasing textile goods, the respondent is directly came and purchasethe materials through invoices. Further, he stated that,

when at the time the goods has been supplied to the purchaser, the signature of the purchaser has to be obtained in the invoice. In the said circumstances In the Trial Court on the side of the accused, the copy of the invoice are marked as Ex.D1 to Ex.D3. During the time of giving evidence, the complainant has admitted that, those documents have been prepared, during the time of selling the textile goods to the respondent. But on go through the said invoice, the signature of the respondent is not found. Considering the said evidence with the factual aspect of this case. If actually, the respondent purchased goods, as stated by the complainant, it is necessary that the respondent has to obtain signature of the respondent in the invoice. But in the invoice produced by the respondent are not having the signature of the accused. So non obtaining the signature from the respondent in the invoice create a doubt, whether the invoice now admitted by the complainant is prepared for the transaction happened with the respondent or not. The said circumstances shows and created a doubt whether the transaction happened between the complainant and respondent is true or not.

16) Further, in order to prove the debt availed by the respondent, the complainant has produced the income tax returns for the period of 2006-2007, 2007-2008, 2008-2009 as Ex.P6 to Ex.P9. In respect, to the said documents P.W.1 has stated in his evidence that the address and the name of the respondent have not been mentioned in the said documents. So, without mentioning the name and address of the respondent in the income tax particulars we cannot come to the conclusion that those documents are genuine and reliable for accepting the debt availed by the respondent. Further more, P.W.1 has specifically stated that no documents are available with him along with the signature of the respondent.

17) Therefore, in the light of the discussion stated supra the respondent successfully created a doubt over the transaction alleged by the complainant. In the said circumstances in order to show the liability of the respondent, no documents had been produced on the side complainant, in the said circumstances. We cannot hold that the complainant is approached the trial Court with clean hands. Accordingly, the existing liability of the respondent have not been proved by the complainant, through the relevant documents, only on the said circumstances, the trial Court acquitted the accused, which does not need any interference.

18) More over, in an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice deliver system is that the every person, accused of committing an offence shall be presumed to be innocence, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal.

The presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

19) In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed. Accordingly, the Criminal Appeal is dismissed and the judgment of acquittal passed by the trial Court in C.C.No.21 of 2008 dated 24.06.2009 is hereby confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sbn

To
1. The Judicial Magistrate No.I, Erode.

2. Do Thro' The Chief Judicial Magistrate,
Erode.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.51557
+1cc to Mr.P.Anand, Advocate, S.R.No.51244

Crl.A.No.485 of 2009

rsi(co)
cs/26/10/2018