IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.497 of 2009

D.Rajasampathkumar ..Appellant / Complainant

versus

R.Rajamanickam .. Respondent / Accused

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 25.06.2009 made in C.C.No.171 of 2007 on the file of the learned District Munsif cum Judicial Magistrate, Kodumudi.

For Appellant : Mr.V.S.Kesavan

For Respondent : Mr.R.Prabakar

J U D G M E N T

The Criminal Appeal arises out of the order of acquittal passed by the learned District Munsif cum Judicial Magistrate, Kodumudi in C.C.No.171 of 2007 dated 25.06.2009.

2. The complainant in C.C.No.171 of 2007 is the appellant and the accused is the respondent.

3. It is the case of the complainant that the accused had given a cheque bearing No.018291 [Ex.P.1] for a sum of Rs.2,00,000/- and he had deposited the same in his bank account. Unfortunately, the cheque was dishonoured and the bank had sent an intimation under Ex.P.2. The complainant had sent a statutory notice under Ex.P.3, which was received by the accused under Exs.P.4 and P.5.

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4. On an appreciation of the oral and documentary evidence and the submissions made by the learned counsels appearing on both sides, by an order dated 25.06.2009, the learned Magistrate had acquitted the accused for the offence under Section 138 of the Negotiable Instruments Act.

5. Now, challenging the said order of acquittal, the appellant approached this Court praying to set aside the order

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and for punishing the respondent under the said offence.

6. Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.V.S.Kesavan, learned counsel appearing for the appellant, Mr.R.Prabakar, learned counsel appearing for the respondent and also perused the records carefully.

7. Initially, on going through the defence taken by the accused in the trial Court, the cheque pertaining to this case was handed over to MLR Finance as security. Accordingly, the accused himself admitted that the signature found in the cheque belongs to him. So, automatically Sections 118(a) and 139 of the Negotiable Instruments Act came into play. Further, the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. In this regard, the learned counsel appearing for the appellant relied on the judgment of our Honourable Apex Court in RANGAPPA vs. SRI MOHAN reported in [2010] 11 SCC 441 wherein, it has observed as follows :

> "26. In light of these extracts, 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. To that extent, the impugned observations in Krishna Janardhan Bhat vs. Dattatraya G.Hegde [(2008) 4 SCC 54] may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant."
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> 27. ....
>
> 28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is

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> that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

8. So, according to the principles laid down by our Honourable Apex Court, in order to rebut the presumption the accused is having the duty to place the probable defence particularly for creating a doubt whether the cheque has been issued for discharging the legally enforceable debt or not.

9. In this regard, when the respondent was examined as R.W.1, he has stated that the appellant is not having any source to lend a sum of Rs.2 lakhs. In this aspect when at the time the complainant examined as P.W.1, he has clearly stated that he had not maintained any accounts for the income and expenditure. He has specifically stated that the income arrived from the business is equivalent to the expenses met out by him. So, the said evidence clearly proves as he has not having any sufficient income to lend Rs.2 lakhs as loan. Apart from that in order to proving the transaction with the accused, no documents via the statement of accounts, income and expenditure statement was produced on the side of the appellant. Now, in the said situation, reliance is placed on the judgment of our Honourable Apex Court in JOHN K. ABRAHAM vs. SIMON C.ABRAHAM AND ANOTHER reported in [2014] 2 SCC 236, in which, it has held as follows:

> "9.It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

10. In the said circumstances, in order to prove the status of the complainant, on the side of the accused, 8 documents were marked as Ex.R.1 to Ex.R.8. During the time of

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cross-examination, the complainant admitted that he has filed so many cases against the various persons for the offence under Section 138 of the Negotiable Instruments Act. In the said situation, all the exhibits produced by the respondent via Ex.R.1 to Ex.R.8 are all the copies of the complaints, in which, the complainant herein is the complainant. It shows that the complainant running a business of finance. If really, a person running a finance business definitely he would have maintain account books for his business. But in this case, the complainant has stated that he has not maintained any account books. So, the said situation creates a doubt whether the cheque was issued by the accused to the complainant in order to discharge the debt or not.

11. In the same way, another one doubt is created whether the complainant is acted as an agent to the MLR Finance as alleged by the accused. Now, on going through the judgment rendered by the trial Court, it was decided the appellant had not proved that he is having the source to give a sum of Rs.2 lakhs as loan. In this regard, as rightly pointed out by the accused in the trial court during the time of trial proceedings in order to show the source of income no document was adduced on the side of the complainant, minimum the copy of the pass book issued by the bank authorities to show the financial capacity is not produced. So, the said decision arrived at by the trial Court is correct and does not need any interference.

12. Moreover in general, 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 delivery system is that every person, accused of committing an offence shall be presumed to be innocent, 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.

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13. In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court.

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14. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The impugned order of acquittal passed by the learned District Munsif cum Judicial Magistrate, Kodumudi, in C.C.No.171 of 2007 dated 25.06.2009 is confirmed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

cla / sri

To

1. The District Munsif cum Judicial Magistrate,
   Kodumudi.

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

+1cc to Mr.V.S.Kesavan, Advocate SR.No.46866
+1cc to Mr.R.Prabakar, Advocate SR.No.46894

Crl.A.No.497 of 2009

RSV(CO)
RMP(25/09/2018)

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