IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.04.2018

CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
CRL.A.No.309 of 2010

B.Lingan .. Appellant/Respondent/ Complainant

Vs.

K.Veerabadraswamy .. Respondent/Appellant/Accused

Prayer: Criminal Appeal filed under Section 378(4) of Cr.P.C., against the judgment of acquittal dated 24.03.2010 passed in C.A.No.24 of 2009, by the learned Sessions Judge, Nilgiris at Udhagamandalam, reversing the well considered judgment of conviction by the trial Court dated 29.10.2009, passed in S.T.R.No.494 of 2008 by the learned Judicial Magistrate, Kothagiri, and prays that this Court may be pleased to set aside the order of acquittal, passed in C.A.No.24 of 2009 dated 24.03.2010, by the learned Sessions Judge, Nilgiris at Udhagamandalam and convict the respondent accused.

For Appellant : Mr.K.V.Sridharan

For Respondent : M/s.A.Bobblie

JUDGMENT

The present Criminal Appeal has been filed challenging the order passed by the learned Sessions Judge, Nilgiris at Udhagamandalam in C.A.No.24 of 2009 dated 24.03.2010 whereby the Appeal preferred by the respondent was allowed and he was acquitted for the offences that he was tried and sentenced to by the trial Court under Section 138 of the Negotiable Instruments Act.

2.The case of the appellant is that the respondent/accused received a sum of Rs.5,00,000/- from him for his urgent needs and towards repayment of the said sum, the accused has issued post dated cheques dated 10.12.2007 for a sum of Rs.5,00,000/- drawn in favour of the complainant. The complainant has presented the cheques for encashment to his bank, State Bank of India, Kil Kothagiri and the cheque was returned with an endorsement of insufficient funds in the account of the accused. On 14.03.2008, the complainant has issued a statutory notice to the accused under Section 138(b) of the Negotiable Instruments Act calling upon him to pay the money and the accused did not receive the notice and deliberately returned the notice. Thereafter, a complainant was filed under Sections 138 read with Section 142 of the Negotiable Instruments Act before the trial Court.

3.The trial Court took the case on file in S.T.R.No.494 of 2008 and the trial Court, after considering all the issues has rejected the plea of the accused and found him guilty for the offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-.

4.Aggrieved by that, the accused has preferred the appeal before the learned Sessions Court in C.A.No.24 of 2009. The learned Sessions Court has considered the issue and found that it is evident from the evidence of PW1 that no scrap of document was produced by PW1 to prove that the debt of the accused. It is highly imaginary to believe that the complainant gave a loan of Rs.5,00,000/- to the accused without any document. In addition to that, the date of borrowing is not known to the complainant and under such circumstances, it has been held by the learned Sessions Court that the complainant has not parted a sum of Rs.5,00,000/- to the accused and hence, it was found that the judgment of the trial Court was ill founded and was set aside the respondent in the present appeal was acquitted for all the charges.

5.I heard Mr.K.V.Sridharan, learned counsel for the appellant and M/s.A.Bobblie, learned counsel for the respondent and perused the entire records.

6.The sum and substance of the present matter would primarily delve upon the fact whether Rs.5,00,000/- was in fact advanced by the complainant to the accused and whether the claim made by the accused that he has never received the money is legally tenable. A perusal of the factual matrix would reveal that the fact that the cheque was issued is not under dispute. It is also further to be noted that the learned Sessions Court while going into the question of whether the cheque was validly given, has considered several judgment and has found that the accused, in a trial under Section 138 of the Negotiable Instruments Act is not expected to prove the defence beyond any reasonable doubt and it is expected of the complainant that once such rebuttal is adduced and accepted by the Court, having to all circumstances of the case and preponderance of probabilities, the evidential burden shifts back to the complainant. Now the question is whether the complainant has discharged his burden and if at all, the burden is discharged, upon it shifting to the accused, whether the accused has adduced compelling reasons to shift the burden back to the complainant is a primary issue that has to be decided herein.

7.In the present case, it is seen that the accused has neither adduced any evidence to rebut the presumption against him nor has he provided any documentary evidence contrary to the case of the complainant. The accused has in fact, admitted to borrowing a sum of Rs.1,00,000/- from the complainant and has stated that the blank cheque was given to the complainant for repayment of Rs.1,00,000/-. This fact has been considered by the trial Court as well.

8.However, the learned Sessions Judge has ignored these crucial aspects and seems to have proceeded on the ground that since the complainant did not provide the date of the lending the money, the same could not be held to be a legally enforceable debt, and therefore, the accused could not be held guilty of committing an offence under Section 138 of the Negotiable Instruments Act.

9.Further, the scope of presumption under Section 139 of the Negotiable Instruments Act has been considered by the Hon'ble Supreme Court in various cases and it has held in Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458 that

> "17.In Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184], this Court held that once issuance of a cheque and signature thereon are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though accused need not adduce his own evidence and can rely upon the material submitted by the complainant. However, mere statement of the accused may not be sufficient to rebut the said presumption. A post-dated cheque is a well recognised mode of payment."

Therefore, it is well settled the scope of Section 139 also includes a presumption of the existence of a legally enforceable debt in favour of the complainant. Therefore, merely because the date of loan was not provided by the complainant could not be a sufficient to discredit the case made out herein.

10.Upon consideration of the entire facts and evidences on record, it could be seen that the accused has very well admitted to the existence of a debt, notwithstanding the quantum. Therefore, there is no question of whether a legally enforceable debt was subsisting or not. Further, the accused has also admitted drawing the cheque in favour of the complainant. Therefore, once when the accused has admitted to both the existence of a debt and also giving the cheque, the presumption against the accused is strengthened and the onus shift on the accused to discharge the same. However, in the instant case, the accused has not provided any sufficient evidence to raise a preponderance of probability in his favour. Therefore, the irrefutable conclusion which this Court could arrive is the guilt of the accused.

11.In the result, the Criminal Appeal is allowed and the judgment of the learned Sessions Judge, Nilgiris at Udhagamandalam, made in C.A.No.24 of 2009, is set aside and the judgment of the trial Court dated 29.10.2009 made in S.T.R.No.494 of 2008 is restored.

vs

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1.The Sessions Judge, Nilgiris at Udhagamandalam.

2.The Judicial Magistrate, Kothagiri.

+1cc to Mr.K.V.Sridharan, Advocate Sr.No.31715

SSV(CO)
sm:14.5.2018

judgment made in
Crl.A.No.309 of 2010