

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.654 of 2009

Pandian

... Appellant

Vs

S.Senthil Kumar

... Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973 against the Judgment dated 14.08.2007, passed in S.T.C.No.915 of 2007, by the learned Judicial Magistrate No.I, Namakkal.

For Appellant : Mr.MA.P.Thangavel

For Respondent : Mr.R.Thirugnanam

J U D G M E N T

This Criminal Appeal has been preferred by the complainant against the acquittal passed in the judgment by the learned Judicial Magistrate-I, Namakkal, in S.T.C.No.915 of 2007.

2.The case of the complainant is that the accused borrowed a sum of Rs.2,00,000/- as hand loan from the appellant/complainant for his family and business expenses and issued a cheque on 03.11.2005. When the same was presented by the complainant in Tamil Nadu Mercantile Bank, Namakkal branch on 05.11.2005, the same was returned with a memo as insufficient funds. The complainant sent a notice through his counsel on 05.12.2005, for which, the accused sent a reply on 22.12.2005. Therefore, the present complaint has been filed by the complainant.

3.On the side of the complainant, one witness was examined and five exhibits were marked.

4.When the accused was questioned under Section 313 of Cr.P.C., he denied the offence. On the side of the accused, one

witness was examined and sixteen exhibits were marked. The learned Judicial Magistrate, after analysing the evidence of both sides, acquitted the accused. Aggrieved by the same, the complainant has preferred this appeal.

5.The learned counsel for the appellant contends that the presumption has not been rebutted. Though issuance of cheque and the signature have been admitted, the trial Court, without appreciating the evidence properly, acquitted the accused and therefore, the judgment of the trial Court is to be set aside and the accused is to be convicted.

6.The learned counsel for the respondent/accused per contra contends that the accused took the premises on lease from the complainant and towards the lease amount, cheque was issued as security along with the lease agreement between the parties. It is further contended that the trial Court elaborately considered the circumstances, whereby, the presumption has been rebutted and also after analysing the non submission of admitted Income Tax Return, has acquitted the accused and the judgment of the trial Court does not require any interference by this Court.

7.In this case, issuance of cheque by the accused is admitted and the signature in the cheque is also admitted. It is to be presumed that the cheque was issued for the legally enforceable debt or liability, unless it is rebutted. It is well settled that when an accused rebuts the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities" which could be drawn not only from material on record, but also by reference to circumstances upon which relied.

8.The accused examined as D.W.1 has deposed that the cheque was given for the lease amount and the Lease Agreement has been marked as Ex.D1. There was also litigation with respect to the lease and the documents relating to the lease and litigation have been marked as Ex.D2 to Ex.D16. It is also seen from the evidence that even in the reply notice sent by the accused, the above defence has been taken by the accused. During cross-examination of the complainant, the above defence has been put to him on the side of the accused. From the above oral and documentary evidence, it is to be inferred that cheque was issued as security to the lease amount. Therefore, it is for the complainant to establish that there was an existing debt and only for that, cheque was issued.

9.The complainant examined as P.W.1 admits that he is in possession of Income Tax account to show that Rs.2,00,000/- was paid to the accused as debt. But, he has not produced the document of Income Tax to establish his version. Thus, the

complainant has not established his case as against the accused and the trial Court has rightly acquitted the accused and this Court does not find any reason to interfere with the same. Therefore, this Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Namakkal.

2.The Chief Judicial Magistrate,
Namakkal.

3.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to Mr.R.Thirugnanam, Advocate SR.No.3835

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.3780

Cr1. Appeal No.654 of 2009

RK(CO)

GN(12/04/2018)

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