

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.660 of 2009

T.B.Adhinarayanan

...Petitioner

Vs.

S.Vaidyanathan

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code to set aside the order of acquittal dated 11.08.2009 passed by the III Additional Judge, City Civil Court, Chennai in C.A.No.279 of 2008 and to reverse the order of conviction dated 23.09.2008 passed by the XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.4773 of 2005.

For Petitioner : Mr.T.Sundar Rajan

For Respondents : Mr.R.Balakrishnan

ORDER

This Criminal Appeal has been filed against the order of acquittal dated 11.08.2009 passed by the III Additional Judge, City Civil Court, Chennai in C.A.No.279 of 2008, wherein the judgment and the order of conviction dated 23.09.2008 passed by the XVII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.4773 of 2005 was reversed.

2.The brief facts of the case is as follows:

On 07.09.2002, the landlord/respondent borrowed a sum of Rs.2,00,000/- from the tenant/appellant. After one year from the date of availing the loan, in order to discharge the debt, the respondent had issued a cheque dated 07.09.2003 drawn on State Bank of India, West Mambalam Branch for Rs.2,00,000/-. When the appellant presented the cheque for collection on 28.10.2003 through his banker viz., Canara Bank, T.Nagar Branch, the same was returned as "Account closed and Funds insufficient" and the same was intimated to the respondent on 29.10.2003. Subsequently, on 12.11.2003, statutory notice was issued and the same was received by the respondent on 15.11.2003. After receiving the same on 14.12.2003, he sent a reply denying the

liability. Thereafter the appellant filed a private complaint before XVII Metropolitan Magistrate, Saidapet, Chennai, which was taken on file as C.C.No.4773 of 2005.

3. During the course of trial proceedings, the appellant had himself examined as P.W.1 and 7 documents were marked as exhibits Ex.P1 to P7. On the side of the respondent, one Thiru.Loganathan was examined as D.W.1. The copy of the petition in RCOP.No.2015 of 2003 and the notice sent by the appellant were marked as Ex.R1 and R2 respectively. Further, the copy of plaint in O.S.No.4943 of 2003 and the written statement filed in the said case was marked as R3.

4. On conclusion of the trial, the XVII Metropolitan Magistrate, Saidapet, Chennai, convicted the respondent and sentenced him to undergo six months simple imprisonment and directed to pay the cheque amount within three months, in default, to undergo simple imprisonment for three months. Aggrieved over the order of conviction and sentence, the respondent has preferred an appeal in C.A.No.279 of 2008 before the III Additional Judge, City Civil Court, Chennai, in which, after elaborate discussions, the learned Judge allowed the appeal and set aside the judgment rendered by the XVII Metropolitan Magistrate, Saidapet, Chennai. Aggrieved against the same, the appellant has filed this present appeal.

5. In order to substantiate the claim made by the appellant, the learned counsel for the appellant made a submission before this Court that the learned First Appellate Judge failed to consider the ingredients of Section 138 of Negotiable Instruments Act in a perspective manner and came to a conclusion that the alleged cheque had not been issued for discharging a legally enforceable debt.

6. On the other hand, the learned counsel appearing for the respondent made a submission before this Court that, the appellant, being a tenant in the respondent's house, stolen away the cheque alleged to have been given by a Respondent pertaining to this case and filed a false complaint against this respondent. Yet another defence is that the cheque in question was handed over to RW1-Govindaraj simultaneously, the same have been received by the appellant and on misusing the same, a false complaint has been foisted against the respondent.

7. On considering either side submissions, now, on going through the exhibit R1, it seems that the appellant is a tenant under the respondent, he had frequently instituted cases against the appellant in various courts. On going through the documents exhibited under R1 to R4, the transaction with regard to this case have not been mentioned anywhere in one of the documents.

The said fact was admitted by the appellant in his cross examination. However, it is an admitted case that the signature found in the pro-note and the cheque belongs to the respondent. According to the case of the appellant, the cheque was issued by the respondent only to discharge his liability. In the said circumstances, now, on going through the contents of the pro-note dated 07.09.2002, it seems that the pro-note was not executed in favour of the appellant. However, since the signature found in the cheque is admitted by the respondent, it is his duty to prove that the cheque in dispute has not been issued for discharging the legally enforceable debt by way of putting the probable defence and create a reasonable doubt over the case of appellant.

8. So, in order to prove the stand taken by the respondent, one Thiru. Loganathan was examined as D.W.1 on the side of respondent. Admittedly, he is the known person both for respondent as well as to appellant. During examination, in his chief examination, he had stated that he filed a private complaint against the relative of the respondent under the provision of section 138 of Negotiable Instruments Act. Further, he stated that the signature found in the pro-note belongs to him. Further in the cross examination, he had stated that the dispute arose to him with the respondent was settled only due to the intervention of the present appellant. Ultimately, he did not say anything with regard to the cheque now in dispute.

9. In the said circumstances, even assuming that the disputed cheque is handed over to D.W.1, being the relative of the respondent, it is not necessary to handover the same to the appellant, since the appellant is a third party. Moreover, on going through entries made in Ex.P.3 Intimation Slip dated 29.10.2003, Ex.P.4. Debit Advice dated 30.10.2003 and Ex.P.2. shows that the Cheque had been returned from the bank with an endorsement "Accounts closed" and "Insufficiency of Funds", so, this Court is of the view that if, really the cheque was mishandled by the appellant, it is the duty of the respondent to give an intimation to the bank for not to honour the cheque. In this case, such notice was not given to the bank authorities by the respondent. Hence, the stand taken by the respondent is not sustainable.

10. Even assuming that the cheque issued in this case in the form of blank cheque, section 20 of Negotiable Instruments Act authorizes the holder to make use of the same. Hence, the defence taken by the respondent are not a sufficient reason to hold that the cheque had not been issued for discharging the legally enforceable debt. Those aspects are not at all discussed by the First Appellate Judge, in perspective manner, based on

the filmsy reasons, he set aside the judgment passed by the trial Court and allowed the appeal.

11. Therefore, the reasons stated by the first appellate Judge for allowing the said Appeal is not having any substance and perspective reason. In the light of the above discussion without any hesitation, this Court holds that the cheque in question was issued by the respondent only in order to discharge his liability and hence, he committed the offence under Section 138 of Negotiable Instruments Act. Thereby, the criminal appeal is allowed and the judgment passed by the III Additional Judge, City Civil Court, Chennai in C.A.No.279 of 2008 is set aside and the judgment rendered by the XVII Metropolitan Magistrate, Saidapet, Chennai is restored. Trial Court is directed to secure the accused and make arrangements to send him to Jail for serving the sentence.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

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To

1. The XVII Metropolitan Magistrate,
Saidapet,
Chennai.

2. The III Additional Judge,
City Civil Court, Chennai.

3. The Public Prosecutor,
High Court, Madras. सत्यमेव जयते

Copy To

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

+1cc to Mr.T.Sundararajan, Advocate SR.No.36934
+1cc to Mr.R.Balakrishnan, Advocate SR.No.36929

Criminal Appeal No.660 of 2009

RK(CO)
GN(11/08/2018)