

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.712 of 2009

R.Ramasamy

.. Appellant

vs.

K.Chandrasekar

.. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., against the order of the learned Judicial Magistrate No.1, Sankari, dated 14.07.2009 made in C.C.No.84 of 2006.

For Appellant : Mr.T.Karunakaran

For Respondent : Mr.A.Thiyagarajan

JUDGMENT

This Criminal Appeal is against the acquittal of the accused for the offence under Section 138 r/w 142 of Negotiable Instruments Act by the learned Judicial Magistrate No.1, Sankari in C.C.No.84 of 2006, dated 14.07.2009.

2. The case of the complainant is that the respondent / accused took a loan of Rs.1 lakh from the complainant for his urgent family expenses on 25.12.2005 and issued a cheque, dated

25.01.2006 in favour of the appellant / complainant. The cheque was presented for collection on 28.01.2006 in Canara Bank, Vaikundam branch and the same was returned with a memo, dated 02.02.2006 saying that there was no sufficient fund in the account. The complainant sent a legal notice on 22.02.2006 and the same was received by the accused on 01.03.2006. But he neither repaid the money nor sent any reply. Therefore, the appellant preferred the complaint before the Judicial Magistrate.

3. On the side of the complainant, three witnesses were examined and 10 Exhibits marked. On the side of the accused three witnesses were examined and 2 Exhibits marked. The trial Court after analysing the evidence acquitted the accused. Aggrieved by the same, the complainant has preferred this Criminal Appeal.

4. The learned counsel appearing for the appellant contends that the trial Court wrongly shifted the burden on the side of the complainant and decided the case in favour of the accused.

5. The learned counsel appearing for the respondent per contra contends that the trial Court after analysing the evidence has rightly acquitted the accused and the same does not warrant any interference by this Court.

6. The respondent / accused admits the issuance of disputed cheque. There is no dispute that the cheque was presented and returned as there was no sufficient fund in the account of the accused. Admittedly the accused has not sent any reply to the notice sent by the appellant / complainant.

7. The main defence of the respondent / accused is that he issued three signed blank cheque leaves bearing Nos.621671, 621672 and 621673 as security for the loan of Rs.5,000/- obtained by him from the appellant / complainant for sugarcane cultivation and the loan amount was realised by the appellant / complainant by presenting the cheque leaf No.621671. In spite of his request, the complainant did not return the other two cheque leaves given to him as security and he utilised one of those two cheques bearing No.621672 and foisted the present case.

8. As per Section 139 of the Negotiable Instruments Act, 1881, the Court has to presume in any complaint under Section 138 that the cheque had been issued for debt or liability. The burden of proving that there was no existing debt or liability is on the accused. The respondent / accused has to discharge during the trial.

9. It is well settled that the respondent / accused need not establish such defence beyond reasonable doubt, but it is suffice to show its existence to be reasonably probable. The Hon'ble Supreme Court in **Hiten P.Dalal v. Bratindranath Banerjee** reported in **(2001) 6 SCC 16** has held as follows :

"Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the "prudent man".

10. In this case, the accused himself examined the wife of the complainant as D.W.1. Having examined her as D.W.1 on the side of the accused, her evidence is crucial to decide as to whether the disputed cheque leaf was given to the complainant as security. She has categorically deposed that the accused took a loan of Rs.1 lakh and gave the cheque. The version of giving the cheque leaves as security is completely denied by her.

11. The trial Court mainly believed the version of the accused because the cheque leaves by bearing Sl.Nos up to 621680, which are subsequent to the disputed cheque leaf were presented

and encashed before the presentation of the disputed cheque. For presentation of the cheque six months time was available on the date of occurrence and therefore presentation of 6 or 7 subsequent cheque leaves prior to the disputed cheque leaf cannot be a reason to believe, the version of the accused that the cheque leaf was given to the appellant / complainant as security.

12. The accused as D.W.3 says that after realisation of the actual loan amount Rs.5,500/- by presenting the cheque 621671, he approached the complainant and requested him to return the other two cheque leaves; but the complainant dodged. He further says that even after issuance of the legal notice by the complainant, he met the complainant and asked him to return the cheques. It is his further evidence that since the complainant told him to return the cheque leaves after coming to the town after 10 days, he did not send any reply. The above version of the accused that even after receipt of notice from the complainant, he believed the words of the complainant who already dodged and kept quiet without sending any reply, that too when the disputed cheque leaf was not issued for any liability is not acceptable. Therefore, viewing from any angle, the defence taken by the accused is not acceptable. The appellant / complainant has established his case and therefore, the respondent / accused is guilty for the offence under Section 138 r/w 142 of Negotiable Instruments Act.

P.KALAIYARASAN, J

tsvn

In the result, this Criminal Appeal is allowed and accordingly, the Judgment, dated 14.07.2009 passed in C.C.No.84 of 2006 on the file of the Judicial Magistrate No.1, Sankari is set aside. The respondent is found guilty for the offence under Section 138 r/w 142 of Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for six months. The respondent / accused is also directed to pay a compensation of Rs.1,00,000/- (Rupees One lakh only) to the appellant / complainant. The trial Court is directed to commit the respondent / accused to undergo the period of sentence by issuing NBW.

06.02.2018

Index : Yes / No

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To

1. The Judicial Magistrate No.1
Sankari.
2. The Public Prosecutor
High Court of Madras.

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