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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.85 of 2009

R.Kalaiyarasi .. Appellant/Complainant

Vs.

C.Jayapal .. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 08.09.2008 made in C.C.No.619 of 2004 on the file of the learned Judicial Magistrate, Tiruchengode.

For Appellant : Mr.N.Manokaran

For Respondent: Mr.S.Anandhakumar

JUDGMENT

The present appeal has been filed challenging the order passed by the learned Judicial Magistrate, Thiruchengode in C.C.No.619 of 2004 dated 08.09.2009.

2.The facts leading to the filing of the present Appeal is that the respondent has borrowed a sum of Rs.1,75,000/- from the appellant on 21.05.2004 at Alambalayam for his urgent business expenses and in order to discharge the said liability, the accused had issued a post dated cheque bearing No.219367 dated 21.06.2004 drawn on Laxmi Vilas Bank Limited, Olappalayam on the same day. The cheque was presented for collection through the State Bank of India, Pallipalayam Branch on 21.06.2004. However, the same was returned as unpaid on 23.06.2004 with a return memo endorsed as "Account closed" as per the return memo of the Laxmi Vilas Bank Limited, Olappalayam Branch. Despite assuring the appellant that the cheque issued would be honoured on presentation, the respondent had defrauded the appellant and has committed an offence punishable under Section 138 of the Negotiable Instruments Act and Section 420 of I.P.C.

3.The appellant has issued a registered legal notice through his counsel on 16.07.2004 calling upon him to make payments



within 15 days from the date of receipt of the notice. The said notice was received by the respondent on 21.07.2004 and a reply to the said notice was given by the respondent on 01.08.2004. Dissatisfied with the said reply, the appellant has filed a complaint before the learned Judicial Magistrate, Thiruchengode in C.C.No.619 of 2004 seeking the Court to take cognizance of the offence against the accused under Section 138 of the Negotiable Instruments Act read with Section 420 of I.P.C.

4.The respondent before the trial Court has taken a plea that cheque Nos.219367 and 219368 have been misplaced by him and has requested the Bank not to make payments in the event these cheques are presented by sending a letter dated 06.03.2002. Further, the respondent has sent a letter dated 05.12.2003 to the bank requesting that the Savings Account bearing No.1755 shall be closed. Further, the respondent has taken a plea that there is no Proprietorship firm functioning under the name as claimed by the complainant and though the complainant accepts that the signature and the handwriting in the cheque belongs to him, he clearly states that once the cheque has been misplaced and there is no business relationship between the appellant and respondent, there is no cause of action that would arise and hence, invoking the provisions of Section 138 is not maintainable.

5.The trial Court, after considering the rival submissions, has concluded that a person would not give a letter to the Bank to stop payment on the cheque and to close the account in the year 2003 itself for a cheque allegedly given to the respondent a year later in 2004. Therefore, there could not be a presumption that the cheque was given by the complainant to the respondent and hence, the trial Court held that the accused was not guilty of committing an offence under Section 138 of the Negotiable Instruments Act and Section 420 of I.P.C. resulting the present Appeal.

6.I heard Mr.N.Manokaran, learned counsel for the appellant and Mr.S.Anandhakumar, learned counsel for the respondent and perused the entire records.

7.The learned counsel for the appellant would submit that the learned trial Judge has got completely carried away by the technicalities of the issues raised and has not considered the important submissions raised by the appellant. To canvass his case, he has submitted that the execution of the cheque has not been denied and once when the cheque has been executed validly, the burden to rebut the same would shift to the accused as per Sections 118 and 139 of the Negotiable Instruments Act. It has also been submitted that no evidence has been let in by the accused to rebut the presumption under Section 139 of the Act except some ipse dixit oral evidence and it is the categoric



case of the appellant that once when the execution of the cheque has been accepted and the signature and handwriting have been found to be that of the accused, there is no rhyme or reason for the trial Court to believe the frivolous defence raised by the accused and the very purpose of the Negotiable Instruments Act is to ensure that a person issuing a cheque validly is to be made liable in the event of dishonour of the cheque and the same has not been considered by the trial Court and therefore, it has been prayed by the learned counsel for the appellant that the appeal shall be allowed.

8.The learned counsel for the respondent would submit that the claim made by the appellant is erroneous and the learned trial Court has correctly considered the fact that the burden is on the complainant to initially substantiate that the cheque was issued for a lawful purpose and the trial Court has rightly considered the important fact that the cheque was misplaced and in the year 2003 itself, the respondent has given a letter as early as 06.03.2003 and has also closed the bank account in December 2003 itself and there is no reason to upset the finding of the trial Court. This Court is now to deal with a short issue whether the cheque that was issued according to the appellant being dishonoured would be an offence punishable under the Negotiable Instruments Act and Section 420 I.P.C.

9.The Hon'ble Supreme Court in Modi Cements Ltd. V. Kuchil Kumar Nandi, (1998) 3 SCC 249 has held that once the cheque is issued by the drawer a presumption under Section 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action under Section 138 of the Act by the drawee or the holder of a cheque in due course. Further, in Rangappa v. Sri Mohan, (2010) 11 SCC 441, the Hon'ble Supreme Court has held that Section 138 of the Act can be attracted when a cheque is dishonoured on account of "stop payment" instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account.

10.From a mere perusal of the above, it becomes clear that once when the accused has accepted that he has signed and issued the cheque, the burden shifts completely on him to prove that the cheque was not issued for the purpose that it has been claimed to have been issued and also to justify that the complainant is raising a stale or a fictitious claim. Admittedly, the respondent has not denied the issuance of the cheque and has only tried to evade it by claiming that in the year 2003 itself, stop payment was issued and in December 2003, he has closed the account. In any event, the accused has not created any doubt over the presumption made against him.



11.This Court while deciding whether an offence under Section 138 of the Negotiable Instruments Act has been committed or not, has to ascertain whether the essential ingredients of the offence have been met and if so, whether the accused was able to rebut the statutory presumption against him. It is crystal clear in the instant case that all the ingredients of the offence have been met and the accused has miserably failed to rebut the presumptions against him. Therefore, I am of the view that the finding of the trial Court acceding to the frivolous defence raised by the respondent cannot have any legs to stand upon and hence, is hereby set aside. The appeal is allowed and the respondent is held guilty of committing an offence under Section 138 of the Negotiable Instruments Act.

12.However, considering the interests of the parties, and of the nature of the offence which is primarily a civil wrong and the proceedings are in the interest of providing compensation to the victim, as held by the Hon'ble Supreme Court in Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560, this Court considers this as a fit case for providing an opportunity to the accused to repay the amount with interest so as to settle the issue once for all and be discharged of his penalty liability.

13.Therefore, this Court directs the respondent to pay a sum of Rs.1,75,000/- with interest at the rate of 12% per annum along with costs of the litigation to the appellant within a period of one month from the date of receipt of a copy of this order, failing which, the respondent shall be sentenced to imprisonment for a period of one year. This appeal is allowed in the above terms.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

vs

To

The Judicial Magistrate,
Tiruchengode.

Copy to

The Section officer(Records)
Criminal Section, High Court, Madras 104.



+1 CC to Mr.N.Manokaran, Advocate sr 36984.

+1 CC to M/s. Va.Vu. Sivazhakagam, Advocate sr 30852.

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VGII (CO)
SP (10/05/2018)