IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.425 of 2008

Chidambaram .. Appellant/Complainant

Vs

R.Ramakrishnan .. Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C, against the judgment dated 21.04.2008 in C.C.No.90 of 2003 on the file of the Judicial Magistrate No.II, Salem acquitting the respondent/accused.

For Appellant : Mr.S.Kalyanaraman

For Respondent : Mr.N.S.Suganthan (Legal Aid Counsel)

JUDGMENT

The Criminal appeal has been directed against the judgment of acquittal dated 21.04.2008 passed in C.C.No.90 of 2003 by the learned Judicial Magistrate, Salem.

2.The appellant herein is the complainant and the respondent herein is the accused.

3.From the materials available on record, the case of the prosecution is as follows:

(i)P.W.1 Chidambaram is the complainant. He is residing at No.125/I, Veeranilam, Arisipalayam, Salem 9. He is doing the business of selling Starch. The accused Ramakrishnan is having the business relationship with the complainant from the year 1991. During the course of business, in order to settle his liability, the accused had issued three cheques, in which, two cheques were drawn on Indian Overseas Bank and one cheque was drawn on Indian Bank. The cheques pertaining to Indian Overseas Bank were issued for Rs.35,000/- each. Likewise, another cheque pertaining to Indian Bank was issued for Rs.50,000/-. The said cheques have been issued on 15.06.1991 and 20.06.1991 respectively. Subsequent to receiving the cheque, due to request made by the accused, the complainant had not presented the same for encashment till 2002. While so, on 27.01.2002, the complainant demanded the accused to pay the balance amount. For which, the accused revalidated the cheques, wherein, he altered the date of cheque as 15.06.2002 and 20.06.2002. After receiving the said cheques [Exs.P.1 to P.3] the complainant presented the same for collection in Indian Overseas Bank, Chevvapet, Salem. But, the said cheques have been returned unpaid mentioning the reason that "no account (account closed)". The returned memos dated 19.08.2002 pertaining to three cheques were marked as Exs.P.4 to P.6. After receiving the said returned memos from the bank, the complainant sent a statutory notice to the accused on 02.09.2002, in which, he demanded to pay the cheque amount within 15 days from the date of receiving the notice. A copy of the notice was marked as Ex.P.7. The said notice was received by the accused on 04.09.2002 through the acknowledgment under Ex.P.8. Subsequently, he sent a reply notice on 19.09.2002. Finally, the complainant filed a complaint before the learned Judicial Magistrate, No.II, Salem for taking necessary action under Section 138 of the Negotiable Instruments Act, 1881.

(ii)After taking cognizance, on appearance of the accused, he was questioned with allegation levelled against him. For which, he pleaded not guilty. Hence, he was put on trial.

(iii)Under the said situation, in the course of trial proceedings, on the side of the complainant, 4 witnesses were examined as P.Ws.1 to P.W.4 and 9 documents were marked as Exs.P.1 to Ex.P.9. When the incriminating materials put to the accused under Section 313 Cr.P.C, the accused denied the same as false. However, he did examine two witnesses as D.W.1 and D.W.2 and marked 6 documents as Exs.D.1 to Ex.D.6. After concluding the trial, the learned Judicial Magistrate No.II, came to the conclusion that the accused is not found guilty of the offence as alleged by the complainant and passed a judgment of acquittal.

(iv)Against which, now, the complainant approached this Court by way of filing this appeal praying to set aside the judgment dated 21.04.2008 and for punishing the accused.

4.Today, when the appeal is taken up for consideration, I have heard the arguments of Mr.S.Kalyanaraman, learned counsel appearing for the complainant/appellant and Mr.S.Sugantham, learned legal aid counsel appearing for the accused/respondent.

5.The first point submitted by the learned counsel for the complainant is that the transactions happened between the complainant and the accused are admitted in the initial stage, during the time of sending the reply for the statutory notice, the accused did not dispute the signatures found in the cheques. Even though the impugned cheques were sent to the expert opinion, the report has not been marked as an exhibit through an expert. Accordingly, the trial Court, without considering these aspects, committed an error and finally acquitted the accused, which could be rectified through this appeal.

6.On the other hand, the learned counsel for the accused made submissions before this Court that the liability and the signatures found in the cheques were disputed by the accused, thereby, it is the duty cast upon the complainant to prove that the cheques have been issued by the accused for discharging the pre existing liability. Further, since the signatures found in the cheques are disputed by the accused, he has to prove the execution of the cheque. The trial Court, when deciding those issue, came to the conclusion that both the said aspects have not been complied by the complainant. Accordingly, the judgment rendered by the learned Judicial Magistrate is correct and he prayed to dismiss the appeal.

7.This Court considered the rival submissions made by the learned counsels and perused the documents available on record.

8.In the trial Court, the complainant was examined as P.W.1. During the course of cross-examination, he has deposed that he had not produced the documents relating to the business transactions, which had happened with accused. Further, he had admitted that account statement was maintained in respect to the business transactions with the accused.

9.In the said circumstances, since the liability of three cheques were disputed, it is the duty for the complainant to prove the liability of the accused by way of producing the account statement maintained by him. In this regard, now, on going through the judgment rendered by the learned Judicial Magistrate No.II, in page No.6 of the judgment, he mentioned that "both the accused and the complainant clearly and categorically admitted that they are having business transaction. Moreover, as per the notice dated 22.08.2002, which was marked as Ex.D.1, the balance has to be paid by the accused is Rs.6,18,750/-. But, as per the statutory notice dated 02.09.2002, which was marked as Ex.P.7, the total due is Rs.1,60,000/-. Further, as per the chief-examination of P.W.1 as on 15.06.1991, total due is Rs.1,53,114/-. Apart from that, as per three cheques, the total due is Rs.1,20,000/- (Rs.35,000/- + Rs.35,000/- + Rs.50,000/-) . The above said documents have not been disputed by the either side. "

10.In the said situation, the complainant, without producing the accounts, approached this Court. In this regard, reliance has been placed in the decision in John K. Abraham vs. Simon C. Abraham and Another (2014 [2] SCC 236), wherein, paragraph No.9 the Hon'ble Apex Court held as follows:

> "It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."

11.Now, applying the principles of the Hon'ble Apex Court, with this case, in this case also, the complainant has not proved the existing liability of the accused by producing proper and genuine accounts.

12.With regard to the second submission made by the learned counsel for the accused, it is true that in the reply notice sent by the accused, he had not disputed his signatures found in the cheques. But, at the same time, in the statutory notice sent by the complainant, he had not mentioned about the revalidation of the cheques.

13.It is a settled proposition that when the person approached the Court based on the Negotiable Instruments, it is his primary duty to prove the execution of document. But, in this case, in order to prove the execution, the oral evidence of P.W.1 alone was available on the side of the complainant.

14.In this regard, on going through Exs.P.4 to P.6, after getting permission from the Court, the re-validation or endorsement said to have been made by the accused, were sent for chemical examination. Thereafter, a report has also been received by the learned Judicial Magistrate No.II, in which, the hand writing expert found that revalidation endorsement is not written by the accused. But, the opinion given by the expert has not been marked through the author of the document. For which, the learned counsel for the complainant, submitted that the findings arrived at by the handwriting expert are not at all relevant to decide the case in favour of the accused.

15.Even assuming that the said opinion is not taken into account for considering the case in favour of the accused, in respect to the cheque comes under the Negotiable Instruments, the complainant shall prove the execution and in case the execution not been proved through the relevant evidence, the case of the complainant will have to fail. In this case also the factum of execution is not proved by the complainant.

16.Another important point in this case is, only in 2002, after the lapse of 12 years, the cheques have been presented for encashment. As per the evidence of P.Ws.2 and 3 the account maintained by the accused was closed in the year 1993 itself. The non explanation to the gap of 12 years shows that some thing was suppressed by the complainant. The said situation, clearly shows that the complainant had approached the trial Court not with clean hands.

17.In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly, if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

18. In the above said circumstances, I find no reason to interfere with the impugned order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

19.In the result, the Criminal appeal is dismissed. The judgment dated 21.04.2008 passed in C.C.No.90 of 2003 by the learned Judicial Magistrate No.II, Salem in confirmed.

While parting with the case, I appreciate the services rendered by Mr.N.S.Suganthan, learned counsel, appeared on behalf of the respondent as Legal Aid Counsel. The High Court Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

cla

To

1. THE JUDICIAL MAGISTRATE NO.II,
SALEM.

2. THROUGH: THE CHIEF JUDICIAL MAGISTRATE, SALEM.

3. THE SECRETARY,
LEGAL SERVICE AUTHORITY,
HIGH COURT, MADRAS 104.

COPY TO
THE SECTION OFFICER, CRIMINAL SECTION, HIGH COURT, MADRAS.

+1cc to Mr.N.S.SUGANTHAN, Advocate, S.R.No. 44217

Crl.A.No.425 of 2008

KGK(CO)
TR(31/08/2018)