

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl.A.No.448 of 2007

R.Padma

... Appellant

Vs

1. M/s.Lakshmi Enterprises,
by its Sole Proprietor
V.Balasuubramanian.

2. V.Balasubramanian ... Respondents

Prayer : Criminal Appeal filed under Sections 378 (5) of Criminal Procedure Code, to set aside the order of acquittal dated 24.03.2007 made in C.C.No.10039 of 2003 passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Appellant : Mr.R.Loganathan

For Respondents: Mr.N.Bhaskaran

J U D G M E N T

The complainant in C.C.No.10039 of 2003 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is the appellant herein.

2. The complaint instituted by the appellant under Section 138 of the Negotiable Instruments Act ended in acquittal by a judgment dated 24.03.2007. Questioning the same this appeal has been filed.

3. The learned counsel appearing for the appellant pointed out that the Trial Court had acquitted the accused on the ground that the complaint was filed on the second cause of action.

4. In Paragraph 13 of the Impugned Judgment, the learned Metropolitan Magistrate had observed that the cheques were originally presented on 21.08.2003 and though thereafter notice was issued, there was no institution of complaint. She presented the complaint cheque once again on 03.10.2003 and issued second legal notice on 10.10.2003 and on the basis of

the second notice, the present complaint was filed.

5. The learned Metropolitan Magistrate held that the complaint itself was not maintainable. But as rightly pointed out by the learned counsel appearing for appellant, maintainability of such a complaint has been upheld subsequently by the Hon'ble Supreme Court in the decision reported in (2013) 1 SCC 177 (MSR Leathers and S.Palaniappan and another).

6. Therefore, one of the premise on which the impugned judgment of acquittal rests no longer sustainable. But, as rightly pointed out by the learned counsel appearing for the respondent, this is not the only reason for which the accused was acquitted by the Trial Magistrate.

7. The learned Trial Magistrate has given a finding that the accused had rebutted the presumption cast on him under Section 138 of the N.I.Act and that it was not proved that the complaint cheque was issued towards the discharge of a legally enforceable liability. Therefore, merely because the impugned judgment is resting on a decision that was subsequently overruled, the present appeal cannot be straight away allowed. This Court will have to see if the finding of the Trial Magistrate that the cheques in question were not issued towards discharge of legally enforceable liability is correct.

8. The learned counsel appearing for the appellant strongly contended that the accused did not enter the witnesses box and that he did not explain the circumstances in which the complaint cheques came to the hands of the complainant.

9. The cheques in question are dated 21.08.2003, the first cheque for a sum of Rs.3,00,000/- and the second cheque is for a sum of Rs. 2,50,000/-. The notice issued by the complainant on 10.10.2003 stated that in discharge of the hand loan received by the accused, with interest payable thereon, the two cheques were issued. It is true that even though the notices were sent to the correct address of the accused and they were also received by someone at the said address, there was no reply issued by the accused. The complainant was cross examined at considerable length by the accused. Exs.D1 to D3 were marked on his side. The complainant, who examined herself as P.W.1, has admitted the signature attributed to her, Ex.D2 as well as Ex.D3. It has been categorically elicited by the complainant that she had a business transaction with the accused earlier. From Ex.D2, one can see that a sum of Rs.90,000/- was received by the complainant. On a perusal of the Ex.D3 also it is seen that certain sums were passed on to the complainant from the accused.

10. This Court posed a specific question to the learned counsel for the appellant as to when the complainant had given the loan in question to the accused, the definite answer could not be given because no such answer is available on record. The statutory notice is silent on that aspect. The complainant is also silent on the aspect. The complainant had not whispered anywhere in the complainant about the other transaction she had with the accused. Even though, the presumption is drawn against the accused in terms of Section 139 of Negotiable Instruments Act, the accused can rebut the presumption even without getting into the witness box.

11. It is true that in this case, the accused did not get into the witness box and he also did not reply to the statutory notice issued by the complainant. But on that score this Court cannot draw any adverse inference against the accused.

12. A careful reading of the evidence on record, particularly the defence exhibits as well as the answer given by the complainant in the cross examination, would throw considerable doubt on the very case of the complainant. The complainant has not come to the Court with clean hands. In this case, the accused had discharged his burden of proof. Thereafter, it gets shifted to the complainant to prove her case. The complainant made a claim that she had maintained account books and if given times she would be in a position to produce the same before the Court. But she did not produce the same. If really the accused had issued the cheques in question towards the repayment of loan incurred by him, he would not have issued both the cheques on the same date namely 21.08.2003.

13. From the perusal of the Ex.D2 and D3, it is seen that in the year 2002 and 2003 transactions had taken place between the parties. Therefore, it was incumbent for the complainant to have made a full and frank disclosure. She has not done so. Therefore, the Court below come to the conclusion that the complaint cheques were not proved to have been issued in respect of a legally enforceable liability. Therefore when the decision of the Court below has not been shown to have been perverse, this Court exercising the appellate jurisdiction find no reason to interfere in this Appeal. Hence, there is no need to interfere with the judgment of the Trial Court. Accordingly, this appeal stands dismissed.

-s/d-

Assistant Registrar (CS-IX)

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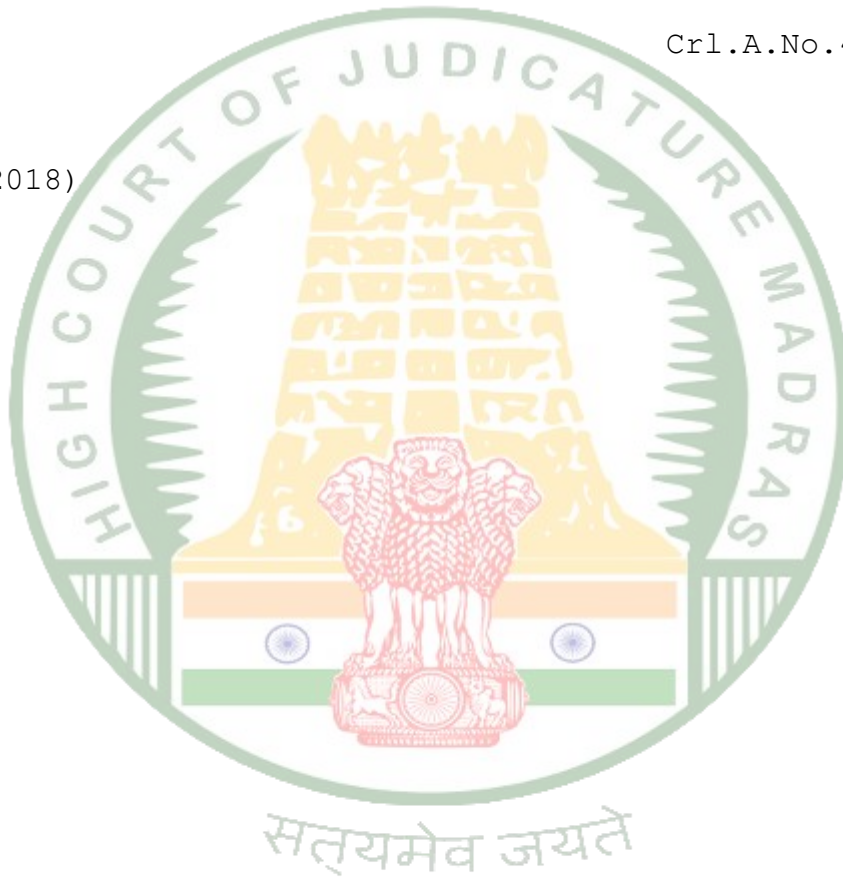
The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

+1 CC to Mr.R. Loganathan, Advocate sr 58743.

+1 CC to Mr.N. Baskar, advocate sr 58732.

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NRL (CO)
SP(12/11/2018)



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