IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.04.2018
Judgment Delivered on : 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE R. PONGIAPPAN

Crl.A.No.520 of 2007

B.Balakmoji ... Complainant/Appellant

Vs

J.Sathianarayanan ... Accused/Respondent

Prayer:- Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the order dated 02.04.2007 in C.C.No.779 of 2004 on the file of the learned Judicial Magistrate No.I, Coimbatore and to set aside the same.

For Appellant : Mr.R.Ashraf Khan
for M/s.R.Asokan

For Respondent : R.Bharath Kumar

ORDER

This Criminal Appeal has been filed against the order dated 02.04.2007 passed by the learned Judicial Magistrate No.I, Coimbatore in C.C.No.779 of 2004.

2.Before the trial Court, the appellant herein has filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act.

3.The learned Magistrate, after taking the complaint on file in C.C.No.779 of 2004 and after issuance of summons to the accused, examined the witnesses. To prove his case, the complainant examined himself as P.W.1 and 14 documents were marked as Ex.P.1 to Ex.P.14. On behalf of the accused, 6 witnesses were examined and Ex.D.1 to Ex.D.23 were marked.

4.After having recorded the evidences and considering the depositions and evidences put forth by both sides, the learned Magistrate has come to a conclusion that the respondent herein is not found guilty for the offence arose in the Private complaint and acquitted the respondent. Against which, the appellant has filed the present appeal before this Court.

5.On going through the complaint and documents filed by the appellant before the trial Court, the case of the appellant was projected as follows:

The respondent was running a Finance Company in the premises owned by him. On considering the request made by the respondent, the appellant and his friends handed over Rs.40 lakhs to the respondent on several occasions. Due to the dispute arose in the transaction, the appellant lodged a complaint before the learned Judicial Magistrate No.II, Coimbatore, for taking necessary action against the respondent. The said complaint filed by the appellant was forwarded to the Inspector of Police, C.C.B., Coimbatore, with a direction to investigate the case. Subsequent to the orders passed by the learned Judicial Magistrate No.II, Coimbatore, the Sub Inspector of Police, C.C.B., Coimbatore, registered a case against the respondent herein in Crime No.24 of 2003 for the offence punishable under Section 406 of IPC. After registration of the case, the respondent approached the complainant and requested to settle the matter amicably. Thereafter, on 26.11.2003, a Memorandum Of Understanding has been executed between the appellant and the respondent. Based on the same, the respondent issued a Cheque for a sum of Rs.11 lakhs on 11.02.2004. The said Memorandum of Understanding and the said cheque was marked as Ex.P.2 and Ex.P.3. When the cheque was presented in Lakshmi Vilas Bank, R.S.Puram Branch, Coimbatore, for collection, it was returned on 12.02.2004 for "insufficient funds". The said Return Memo and the Debit Advice has been marked as Ex.P.4 and Ex.P.5. After returning the cheque, the appellant sent a statutory notice to the respondent on 09.03.2004, in which, he requested the respondent to pay the entire cheque amount within a period of 15 days. The said statutory notice marked as Ex.P.6 was received by the respondent on 10.03.2004. After receiving the said notice, on 12.03.2004, he sent a reply notice, in which, he denied the liability as well as the issuance of the said Cheque. The Acknowledgment Cards with regard to receipt of the statutory notice and the reply notice issued by the respondent has been marked as Ex.P.7 and Ex.P.8.

6.Thereafter, the complainant lodged a private complaint before the learned Judicial Magistrate No.I, Coimbatore. After analyzing the evidence, the learned Magistrate has come to the conclusion that the respondent is not found guilty and finally, acquitted the respondent.

7.In order to substantiate his claim, the learned counsel appearing for the appellant would submit that as per Section 142 of the Negotiable Instruments Act, the appellant complied with the conditions stipulated in the Act and lodged a complaint before the learned Magistrate. Further, he added that the witnesses examined on the side of the respondent does not say anything about the execution of Memorandum Of Understanding. Therefore, the evidence with regard to the execution of Memorandum of Understanding by the appellant is alternatively admitted by the respondent. In the said circumstances, the appellant has initially proved his case and the initial presumption is in favour of the complainant. Accordingly, the presumption mandated by Section 139 of the NI Act, does indeed include the existence of a legally enforceable debt of liability. In this way, the respondent admitted the issuance of cheque. To that effect, during the time of giving evidence as P.W.1, the appellant clearly deposed the manner of execution of the cheque. Thereafter, it is the duty of the respondent to raise a probable defence, which creates a doubt about the existence of the legally enforceable debt or liability.

8.In this case, the defence raised by the respondent is that the Memorandum of Understanding executed in C.C.B. Police Station is by way of giving coercion and threat through the police. In this regard, nobody was examined from the side of the Police. In the said situation, the examination of 5 witnesses on the side of the respondent before the trial Court are not stated anything about the execution of Memorandum of Understanding. In the said situation, it is the duty of the Court to consider Section 139 of the Negotiable Instruments Act and holds that the alleged offence has been proved by the appellant. Inspite of that, the learned Judicial Magistrate No.I, Coimbatore, had not discussed those aspects, while acquitting the respondent, is not in accordance with law and thereby, he seeks to allow this appeal.

9.Now, on going through the documents put forth by the respondent before the learned Judicial Magistrate, it appears that the Memorandum of Understanding was admittedly created on 26.11.2003. The case of the appellant was that the alleged cheque has also been issued on the same day for Rs.11 lakhs. But, on the very next day of execution on 27.11.2003 itself, the present respondent issued the Advocate Notice to the appellant by mentioning that the alleged Memorandum of Understanding and the cheque have been prepared and received by coercion in the presence of the Police Officials. In the same way, the respondent issued a legal notice to the Bank Manager and requested not to honour the cheque by mentioning the entire things. Thereafter, a Suit has been filed by the respondent in O.S.No.130 of 2004 seeking the relief of declaration that the Memorandum of Understanding and the cheque in question are all void.

10.After completion of all proceedings, the cheque was presented for collection by the appellant only on 11.02.2004. In this situation, it is nothing but a probable defence raised by the accused. No prudent man can give a sum of Rs.40 lakhs to the other man by way of hand loan without getting any documents.

11.In the said fact coupled with the evidence given by the respondent as D.W.6 that the Memorandum of Understanding and the cheque were obtained by the appellant supposed to be true. Further, during the time of giving evidence by the wife of the respondent as D.W.5, she narrated the entire things as stated by the respondent. Further, he alleged that on the date on which, the alleged Memorandum of Understanding executed by her husband is in the hurried mood for attending the marriage in Krishnagiri. Further, he deposed that at that time, her daughter gave birth one child. In order to prove the same, a Certificate issued by the Doctor and the marriage invitation were marked as Ex.D.13 and Ex.D.14.

12.Moreover, on 25.12.2003, the respondent published Advocate Notice in the Newspaper, in which, he mentioned about the execution of Memorandum of Understanding, as stated in this case. Ex.D.13-Copy of the paper publication evidences the same. Further, the evidence given by D.W.5 shows that in the year 2003 itself, the complainant has been lodged a complaint before the Commissioner of Police with regard to the money dispute arose between the appellant and the respondent.

13.On a conjoint reading of the evidence put forth by the respondent shows that the cheque pertaining to this case was handed over to the appellant on 26.11.2003 in the presence of the Police Officers. So, we cannot come to the conclusion that the said cheque has been issued only for the purpose of discharging the legally enforceable debt.

14.If really any loan is availed by the respondent, it is the duty of the appellant to show that on what manner and in which date, the said loan was availed by the respondent. Even assuming that the said due was made during the time of business transaction, it is the duty of the appellant to show the Accounts Books with regard to the said transaction. But, in this case, the appellant has not produced any document to show that the respondent has to pay Rs.11 lakhs to the appellant.

15.In such circumstances, the trial Court has correctly analyzed the entire facts and come to the conclusion that the alleged cheque was not issued for discharging the legally enforceable debt and hence, acquitted the accused.

For all these reasons, this Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-
Asst.Registrar (CS II )

/true copy/

Sub Asst. Registrar

mps

To

1.The Judicial Magistrate No.I,
Coimbatore.

+1cc to Mr.R.Bharathkumar, Advocate, sr.30997

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NA(CO)

RRK(23/05/2018)