IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CRL.A.588 of 2008

C.R.Muthukumar .. Appellan

.Vs.

R.Ranganayagi .. Respondent

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the order passed in C.A.No.197 of 2007 dated 06.06.2008, on the file of the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore, and restore the order of conviction passed in S.T.C.No.61 of 2006 dated 18.04.2007 passed by the learned Judicial Magistrate No.VII, Coimbatore.

For Petitioner : Mr. G.R.Hari for Ram and Ram
For Respondent : Mr. S.Gunalan

JUDGMENT

This Criminal Appeal has been filed by the Complainant aggrieved by the order passed in Crl.No.197 of 2007, wherein the Appellate Court had set aside the order of conviction and sentence passed by the learned Judicial Magistrate No.VII, Coimbatore for an offence under Section 138 Negotiable Instruments Act.

2.The brief facts that are necessary for the purpose of disposing the appeal are ; The husband of the accused is said to have borrowed a sum of Rs.3,75,000/- [Rupees Three Lakhs Seventy Five thousand Only] from the complainant on 04.04.2004. Towards the said loan, the husband of the accused is said to have executed a demand promissory note on the same date for a sum of Rs.4,75,000/- [Rupees Four Lakhs Seventy Five Thousand Only] in favour of the complainant. Since this amount was not repaid in spite of demands and requests, in order to discharge the liability of the husband, the wife who has been arrayed as an accused is said to have issued a cheque bearing No.088032 dated 22.11.2005 for a sum of Rs.3,75,000/- [Rupees Three Lakhs Seventy Five thousand Only]. When this cheque was deposited by the complainant, the cheque was returned with an endorsement ''account closed'' on 24.11.2005. Thereafter, the complainant issued a legal notice dated 03.12.2005 calling upon the accused to pay the value of cheque within 15 days and the accused person in spite of the receipt of the notice neither gave a reply nor paid the cheque amount to the complainant. Consequently, the complainant has filed the present complaint for an offence punishable under Section 138 and 142 of the Negotiable Instruments Act.

3.The complainant in order to substantiate his case has examined himself and 5 documents were marked on his side. The accused had examined 2 witnesses one being the Manager of the Bank who was examined as DW-1, and her husband was examined as DW-2 and the passbook was marked as a document on the side of the accused person. That apart 3 documents were summoned from the Bank and were marked through DW-1.

4.The Trial Court on appreciation of the materials available on record was pleased to pass an order convicting the accused person for an offence under Section 138 of the Negotiable Instruments Act and imposed a sentence of one year Simple Imprisonment.

5.The accused aggrieved by this order filed an appeal in Crl.A.No.197 of 2007. The Appellate Court on consideration of the oral and documentary evidence and on consideration of the submissions made on the either side, by its order dated 06.06.2008 was pleased to set aside the order of conviction and sentence passed by the Trial Court. Aggrieved by the same, the complainant has filed the present Criminal Appeal.

6.The learned counsel for the appellant made the following submissions:

a)The version of the defense was that this cheque was given towards security for a chit that was conducted by the complainant in which the accused husband had joined. The accused husband had made a bid on 13.01.2003, and with that the entire transaction came to an end and therefore there is no necessity for the husband of the accused to again approach the complainant seeking for a loan in the year 2004 and there is no necessity for the accused to have issued a cheque to the complainant towards discharging the liability of the husband. This version was not taken as a defense at the earliest point of time by way of sending a reply notice to the statutory notice issued by the complainant.

b)If the defense taken by accused is even presumed to be true, the entire chit transaction came to an end in 2003 and thereafter there was an independent loan transaction by the husband of the accused with the complainant wherein he borrowed a sum of Rs.3,75,000/- [Rupees Three Lakhs Seventy Five thousand Only]. Towards discharging this loan, the accused has issued a cheque to the complainant. Therefore, there is no connection between the earlier chit transaction and the subsequent loan transaction.

c)Legally enforceable debt or liability is a matter of presumption under Section 139 and it is for the accused to rebut that presumption and in the instant case the accused has not rebutted in the said presumption.

7.Per contra, the learned counsel for the respondent would submit that the Appellate Court has taken into consideration the entire chit transaction and on comparison of the passbook that was marked as Ex.D-1 and also the records that were summoned from the Bank, the Appellate Court has given a categorical finding that except cheque Nos.88032 and 88033, all the other cheques bearing Nos.88001 up to 88005 have been deposited and therefore came to a conclusion that the subject matter cheque was in fact given as a security for the chit transaction. The learned counsel for the respondent would further point out the finding of the Appellate Court with regard to the name of the witness that was found in Ex.P-1 in promissory note wherein the Appellate Court found that the promissory note that was given was a blank promissory note and was signed by one Jagadish as a witness and below his signature the entire address has been typed. Therefore, the best evidence that was available for the complainant in order to prove the loan transaction, was to have called Jagadish as a witness and examined him. The learned counsel for the respondent further contended that the complainant in his evidence has specifically admitted that he is maintaining a Receipts and payments ledger and in that record this so called loan transaction was not even recorded. The learned counsel for the respondent would further submit that the accused has rebutted the presumption under Section 139 of the Negotiable Instruments Act by preponderance of probabilities and on such rebuttal, the complainant on whom the burden shifts, has to prove the existence of the debt or liability and he has failed to prove the same. Therefore, the learned counsel for the respondent would submit that there are absolutely no grounds to interfere with the findings of the Appellate Court.

8.This Court has considered the submissions made on the either side and also has gone through the records and the orders passed by both the Courts below. It is the specific case of the complainant that the husband of the accused had borrowed a sum of Rs.3,75,000/- [Rupees Three Lakhs Seventy Five thousand Only] on 04.04.2004 from the complainant and he had executed a demand promissory note which was marked as Ex.P-1. Towards this loan transaction, the accused is said to have given a cheque in favour of the complainant which is dated 22.11.2005. On a mere perusal of the evidence of PW-1, who is the complainant, his categorical admission is that the accused and her husband have approached him on 04.04.2004 asking for a loan and at that point of time Jagadish who was working in the office of the complainant was also present. It is his further admission that the accused and her husband even while approaching the complainant had already typed in the promissory note and a cursory look at the promissory note makes it clear that Jagadish had signed above his name and address which has been typed. There was no way the accused and her husband while bringing the promissory note would have known that one Jagadish will be the witness in the promissory note and therefore the version of the complainant that the promissory note was brought typed by the accused and her husband is not believable. This only substantiates the case of the defense that the promissory note was a blank promissory note that was available with the complainant towards the earlier chit transaction and this promissory note has been typed and used for the purpose of this case. If really the version of the complainant is true, the best evidence that was available for the complainant was to examine Jagadish who is none other than a person who is working in his own office.

9.It is also seen from the records that were summoned through PW-1 Bank Manager that a cheque book containing 50 cheque leafs was actually issued to the accused person. Out of these 50 cheque leafs, 48 cheque leafs were used between the period 31.12.2002 to 21.03.2003 and all these cheques were deposited in the Bank. The rest of the 2 cheques viz., cheque Nos.88032 and 88033 were the only 2 cheques which were not deposited in the Bank through the relevant point of time. It must also be noted that it is during this period of time, the chit transaction was going on between the complainant and the husband of the accused. Out of these two cheques, one cheque bearing No.88032 is the subject matter of the present case. The version of the defense that the subject matter cheque was given as a security to the complainant as a security for the chit transaction has been established by preponderance of probabilities.

10.One more factor that been taken into consideration is that the complainant in the course of his business of lending money admittedly is maintaining books of accounts for the payments and receipts and when a question is put to him in the course of his cross examination he says that this particular loan transaction has not been recorded in the books of accounts maintained by him.

11.The above two factors clearly goes to show that the version of the defense that there was an earlier chit transaction and in that transaction the subject matter cheque was given as a security and also a promissory note was given as a security and these documents which were given as security, is now sought to be misused by the complainant as if a subsequent loan was taken in the year 2004, stands established and the burden of proof shifted on the complainant to prove that the cheque was issued for a legally recoverable debt or liability.

12.After the burden of proof was rebutted by the accused, the complainant must have at least examined Jagadish who according to him was the person who was present at the time when the loan was given by the complainant to the accused and her husband. However for reasons best to known to the complainant this was not done. Therefore, the Appellate Court after discussing the entire evidence that was available on record has rightly come to the conclusion that the complainant failed to prove the fact that the subject matter cheque was issued towards a discharge of debt said to have been taken by the accused and her husband.

13.This Court does not find any ground to interfere with the order passed by the Appellate Court and the Appellate Court has written a well considered order while reversing the order of conviction and sentence passed by the trial Court. In the result, this Criminal Appeal stands dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KP
To

1.The Additional District & Sessions Judge,
Fast Track Court No.III,
Coimbatore.

2.The Judicial Magistrate,
Judicial Magistrate Court No.VII,
Coimbatore.
3. The Chief Judicial Magistrate, Coimbatore.

+ 1 cc to Mr.S. Gunalan,Advocate Sr.39776

CRL.A.No.588 of 2008

SSI(CO)
EU(05/07/2018)