IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.355 of 2013

Lakshmi
w/o Lalith Jain @ Lalith Kumar
Represented by Power Agent
Awdhesh Pisath
Now Represented by power Agent
L.Vijay Jain
s/o Lalith Jain @ Lalith Kumar .. Appellant

.. Vs ..

1. V.N.Dhanakodi

2. The State represented by
Additional Public Prosecutor
Erode, Erode District. .. Respondents

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C., to set aside the order passed in C.A.No.143 of 2011 dated 30.08.2012 on the file of 2nd Additional Sessions Judge, Erode, reversing in S.T.C.No.30 of 2011 dated 09.11.2011 on the file of Judicial Magistrate, FTC No.I, Erode.

For Appellant : Mr.D.Balachandran

For Respondents : Mr.S.Kalyanaraman for R1
Mr.R.Ravichandran
Government Advocate (Crl. Side)
for R2

JUDGMENT

Seeking to set aside the order passed in C.A.No.143 of 2011 dated 30.08.2012 on the file of 2nd Additional Sessions Judge, Erode, reversing in S.T.C.No.30 of 2011 dated 09.11.2011 on the file of Judicial Magistrate, FTC No.I, Erode, the appellant is before this Court with this Criminal Appeal.

2.It is the case of the appellant that the 1st respondent borrowed a sum of Rs.8,00,000/- (Rupees Eight

Lakhs Only) and issued a post dated cheque as security for a debt. On 11.03.2010, the said cheque was deposited by the appellant in his bank account and the same was returned by the bank stating that "the account has already been closed". In respect of the same, the appellant received a bank memo on 12.03.2010. Thereafter, he sent a statutory notice to the 1st respondent on 16.03.2010. After receipt of the statutory notice, the 1st respondent sent a reply to the appellant, stating false allegations. The allegation of the appellant is that knowing fully well that his account has already been closed, the 1st respondent has issued the present cheque to the appellant. Even after receipt of the statutory notice, the first respondent neither repaid the money nor taken any steps to honor the alleged cheque. Therefore, according to the appellant, the 1st respondent has committed an offence under Section 138 of the Negotiable Instruments Act. For which, the appellant, has filed an application before the Judicial Magistrate, Fast Track Court No.I, Erode in S.T.C.No.30 of 2011.

3.After completing all the legal formalities and trial, the learned Judicial Magistrate found that the 1st respondent has committed offence under Section 138 of Negotiable Instruments Act. Therefore, the trial Court convicted the 1st respondent under Section 255 (2) of Cr.P.C and sentenced him to undergo 1 year simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo 1 month simple imprisonment.

4.Against the said order of conviction and sentence passed by the learned Judicial Magistrate, FTC No.I, Erode, the 1st respondent filed an appeal before the 2nd Additional Sessions Judge, Erode, in C.A.No.143 of 2011.

5.After considering the submissions made by either side and the materials available on record, the learned 2nd Additional Sessions Judge, allowed the appeal and set aside the order of conviction and sentence passed by the Judicial Magistrate, FTC No.I, Erode.

6.Aggrieved against the Judgment of the 2nd Additional Sessions Judge, Erode, the appellant herein has preferred the present Criminal Appeal before this Court.

7.The learned counsel for the appellant would submit that the 1st respondent has not denied the execution of the cheque and also his signature found on the cheque. Further the 1st respondent has not proved that the appellant had misused the cheque given as security for the debt or the said amount has already been paid.

8.Though the trial Court has found that the 1st respondent has committed offence under Section 255 (2) of Cr.P.C, the 2nd Additional Sessions Judge, Erode, wrongly came to the conclusion that the power of attorney obtained by the appellant herein is invalid and the appellant has not proved the transaction between her and the 1st respondent. The 2nd Additional Sessions Judge has further held that there is no proof of execution of cheque for the legally enforcible debt. Hence, according to the learned counsel for the appellant, the order passed by the 2nd Additional Sessions Judge, Erode has to be set aside.

9.The learned counsel appearing for the 1st respondent would submit that since the power of attorney was executed by the appellant only in Rs.100/- stamp paper, it is not valid and even otherwise, if it is valid, it is for the appellant to prove the case that the 1st respondent borrowed a sum of Rs.8,00,000/- from her and had given the present cheque for the said legally enforcible debt. Even the 1st respondent has sent notice to the appellant to return the alleged cheque, which was given by him in connection with earlier transaction. But, the appellant has failed to return the said cheque. In such a way, the appellant has misused the alleged cheque and she also used the said cheque for some other transaction without the knowledge of the 1st respondent. Despite the appellant has filed the complaint, the learned 2nd Additional Sessions Judge, Erode, has rightly appreciated the facts and legal position and also found that the 1st respondent is not found guilty and allowed the appeal.

10.The learned counsel for the 1st respondent further contended that there is a material contradiction between the evidence of the appellant and her power agent. Though the power of attorney was executed with the knowledge of both the appellant and the power agent, financial transactions have been done only by the appellant and the same is clearly established in the cross examination of P.W.1. More particularly, the power agent does not know anything about the transactions made between the appellant and the borrower viz., 1st respondent. Therefore, there is a material contradiction between the evidence of appellant and the power agent. Moreover, the appellant herein, has not proved the case beyond the reasonable doubt. Hence the 2nd Additional Sessions Judge has rightly appreciated the entire evidences and the materials available on record and has allowed the appeal in C.A.No.143 of 2011 dated 30.08.2012. Hence, according to the learned counsel for the 1st respondent, the judgment passed by the 2nd

Additional Sessions Judge does not warrant any interference at the hands of this Court.

11.Heard both sides and perused the materials available on record.

12.It is well settled principle of law that High Court should not normally interfere in the well reasoned order of Courts below which has been arrived at after proper appreciation of evidence. This Court will interfere in appeals against acquittals, only where the Courts below makes wrong assumptions of material facts or fails to appreciate the evidence properly. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, this Court is not expected to reverse the acquittal merely because it would have taken the view against the accused, had it tried the case. The very fact that two views are possible makes it clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and consequently the accused is entitled to benefit of doubt.

13. It is not in dispute that the presumption of innocence is further reinforced, reaffirmed and strengthened against the acquitted accused by the Judgment in his favour.

14. In the light of the above well settled principles, this Court would proceed to examine the evidence and analyze whether the intervention of the 2nd Additional Sessions Judge in the order of trial Court was justified.

15. In this case, power of attorney of the complainant was examined as P.W.1 and the husband of the complainant was examined as P.W.2 and Exs.P.1 to 10 were marked through them. P.W.1 has deposed that he did not know where and when the cheque was issued. P.W.1 has stated that P.W.2 was doing finance business, whereas P.W.2 in his evidence during cross examination, he has stated that he was not doing finance business, but whereas he admitted that in the complaint he has stated that he was doing finance business. The evidences of P.W.1 and P.W.2 are mutually contradicting each other. The appellant/complainant has not come to the witness box. P.W.1 has no personal knowledge about lending money to the respondent. P.W.2 also stated that he was not personally aware of that how much appellant lent to the respondent and transaction between the appellant and respondent. Further P.W.1 is power agent and he has no personal knowledge about the transaction. Power of

Attorney cannot give evidence regarding personal knowledge of the principal. Hence, this Court finds that the appellant has not approached the Court with clean hands and the appellant has not proved his case beyond reasonable doubt. When two views are possible the benefit of doubt should always be extended in favour of the accused. Hence there is no merit in the appeal and there is no reason to interfere in the Judgment passed by the 2nd Additional Sessions Judge, for the reason stated above. The appeal is liable to be dismissed.

16.In the result, the judgment passed by the learned 2nd Additional Sessions Judge, Erode, in C.A.No.143 of 2011 dated 30.08.2012 is confirmed and the Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

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To
1. The 2nd Additional Sessions Judge,
Erode.

2.The Judicial Magistrate,FTC NO.1,Erode.

3. Additional Public Prosecutor
Erode, Erode District.

+1cc to Mr.S.Kalyanaraman , Advocate SR.No. 59016
+1cc to Mr.D.Balachandran , Advocate SR.No.58966

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ASK(06/12/2018)