

In the High Court of Judicature at Madras

Dated:28.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.657 of 2006

R. Sathiamoorthy

.. Appellant/Complainant

-vs-

M.Hariharan

.. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records in C.C.No.4130 of 2002 on the file of the IX Metropolitan Magistrate Court at Saidapet and to set aside the order of acquittal dated 28.06.2006 and convict the respondent for the offence under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.G.Krishnakumar

For Respondent : Mr.M.Rajendran
Legal Aid Counsel

Orders Reserved on	Orders Pronounced on
16.02.2018	28.03.2018

J U D G M E N T

This appeal has been preferred by the complainant, seeking to set aside the order of acquittal dated 28.06.2006 passed by the learned IX Metropolitan Magistrate, Saidapet and convict the respondent for the offence under Section 138 of Negotiable Instruments Act.

2. For the sake of convenience, the parties would be referred to as the complainant and accused.

3. The case of the complainant in the complaint was that the accused was running a book stall and he, on the assurance of making him as a partner in the stall, owed a sum of Rs.3,20,000/- from the complainant in the year 2001. Subsequently, the accused neither made him as a partner nor returned the amount to the complainant and when the amount was demanded, the accused had given a cheque dated 01.11.2001 drawn on ABN Amro Bank for Rs.3,20,000/-, which, on presentation, was

returned with an endorsement "insufficient funds".

3.1. It was further alleged that the complainant immediately sent a legal notice dated 02.05.2002 to the accused and failure on the part of the accused either to repay the amount or respond to the legal notice resulted in lodging a complaint under Section 138 of Negotiable Instruments Act, 1881 (in short "N.I.Act"). Learned IX Metropolitan Magistrate, Saidapet, finding prima facie materials against the accused, has taken cognizance of the complaint on file in C.C.No.4130 of 2002.

3.2. Before the Trial Court to prove the case, the complainant examined P.Ws.1 to 3 and marked Ex.Ps.1 to 7. Further, on behalf of the accused, D.Ws.1 to 3 were examined and one document was marked. At the conclusion of the trial, the accused was acquitted of the charge under Section 138 of N.I.Act by the Trial Court, on the basis of oral and documentary evidence adduced on either side and aggrieved by such acquittal, the petitioner/complainant has invoked the appeal jurisdiction, seeking to set aside the said order.

4. The learned counsel for the appellant/complainant would submit that when P.W.3, a Bank Official, himself had clearly deposed that the cheque was returned owing to insufficient funds and in support of the same, a copy of the bank passbook had also been exhibited, the Trial Court had simply kept aside the same and acquitted the accused. Though there were corrections regarding name and amount in Ex.P1 / cheque, those corrections were duly countersigned by the respondents, which leads to the inference that it was duly given by the respondent.

4.1. The learned counsel for the appellant/complainant would further submit that the ingredients as required under the provisions of Section 138 of N.I.Act were fulfilled to establish the offence committed by the accused and when the accused himself admitted issuance of cheque to discharge the liability as well as his signature in the cheque, the question of tampering the impugned cheque does not arise at all. Once it was duly proved in respect of issuance of cheque by the accused, then there is a legal presumption that the cheque was issued towards discharge of liability and moreover, the accused also failed to rebut the presumption. Contending that the very imprudent act of the accused would prima facie suffice to convict him, it is prayed that the order of acquittal needs interference by this Court.

5. Learned Legal Aid Counsel appearing for the respondent has contended that there was a contradiction in the evidence of the plaintiff itself and in the cross examination, it was deposed by him that the accused borrowed loan for

development of his book stall, whereas in the complaint, it was stated that the accused, with an assurance to make him as a partner in the business, received the amount. It was further contended that the impugned cheque was given by the accused to one Hariharan, which was not returned by the said Hariharan even after discharge of the entire loan and the cheque was misused by the complainant, as if it was given to him. Therefore, there is no prima facie material to connect the accused with the alleged offence and the order of the Trial Court is valid in the eye of law and needs no interference by this Court.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. It was alleged in the complaint that the accused was running a book stall and he induced the complainant to join as a partner so as to gain more profit out of the business. Believing the words of the accused, the complainant agreed to associate himself in the business, for which, he also gave a cheque for Rs.3,20,000/- as a token of agreement. The accused had given a blank cheque for the receipt of the above amount instead of giving a receipt therefor. It was further alleged that failure on the part of the accused to honor the commitment forced the accused to lodge a complaint and take the subsequent action. When the return of the amount was insisted upon by the complainant, a cheque duly signed by the accused was handed over for the said amount and the said cheque got bounced when presented, leading to invoking appropriate proceedings under the N.I.Act.

8. It is the claim of the complainant that even though several materials were placed before the Trial Court in proof of commission of the offence by the accused, nothing was appraised by it in proper perspective to convict the accused. However, it was the stand of the accused that the version of the complainant was false and concocted one, based on incomplete evidence. Even the deposition of the complainant itself was highly doubtful and dubious without corroboration.

9. A thorough reading of the deposition of P.W.2 / Branch Manager of the Bank, annexed in the typeset of papers would disclose the fact that the impugned cheque was returned twice on 05.03.2012 and 27.04.2012 with the same endorsement "insufficient funds" in the account of the accused. The same version was reiterated by P.W.3 / another Bank Official working in the clearing section. Had the cheque not been issued by the accused in the name of the complainant, he would have immediately prevented the complainant from collecting the amount from his account through the cheque, when it was bounced on the first time. The accused, having kept quite and requested the

complainant to deposit after some time, cannot make hue and cry that the cheque, which was given to one Rajarajan, was misused by the complainant for initiation of the present prosecution. For the sake of argument if it is accepted that the cheque was wrongly utilized by the complainant, he did not produce any piece of evidence to show that he had preferred criminal complaint against the said Rajarajan, who handed over the cheque to the complainant.

10. From the above depositions, it is obvious that the cheque was in the name of the accused and it was presented for collection from his account alone without any objection. Further, learned IX Metropolitan Magistrate, Saidapet had strongly relied upon the evidence of the accused, who deposed that the complainant, being an influential person, threatened the accused in the Police Station itself and carried out some corrections in the cheque, which was originally given to Rajarajan and since his life was put to threat at the Police Station, he was left with no other option, but to countersign the cheque. Therefore, the corrections in the cheque had taken place by force and coercion.

11. This desposition is far from satisfactory and is not sufficient to acquit the accused. No prudent man will normally obtain countersign in the manner narrated by the accused, instead of obtaining a new cheque and in case, such alleged incident had taken place, after the accused was let scotfree, he would have definitely taken steps either to lodge a criminal complaint against the complainant for the malpractice or given a stop payment request to the Bank and in absence of such materials, the version of the accused can be negated as a belied one. On the side of the accused, one Mohammed Sheikh was examined as D.W.1 by the accused and in his cross examination, he had deposed that he was not aware of the cheque purportedly given to Rajarajan and was not aware about the date and amount filled therein and thus, he had not supported the case of the accused by and large. सत्यमेव जयते

12. In view of the foregoing reasons and discussions, this Court is of view that the learned IX Metropolitan Magistrate, Saidapet has erred in acquitting the accused completely, especially when there was some piece of evidence to connect the accused with the offence.

13. In the result,

a) this Criminal Appeal is allowed by setting aside the judgment in C.C.No.4130 of 2002 dated 28.06.2006 passed by the learned IX Metropolitan Magistrate, Saidapet, Chennai;

b) the respondent/accused is convicted and sentenced to undergo Simple Imprisonment for a period of six months and the Trial Court is directed to secure the accused and confine him in the prison to undergo the above sentence;

c) the respondent/accused is directed to pay the amount of Rs.3,20,000/- to the petitioner/complainant forthwith.

d) the High Court Legal Aid is directed to pay a sum of Rs.3,000/- (Rupees Three Thousand only) to the counsel Mr.M.Rajendran as fees.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To:

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The Secretary,
Tamil Nadu Legal Service Authorities,
High Court, Chennai 104.

+2cc to Mr.G.KRISHNAKUMAR, Advocate, S.R.No.24140

Judgment made in
Crl.A.No.657 of 2006

na (CO)
TR(18/07/2018)

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