



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.10.2018

DELIVERED ON : 30.10.2018

WEB COPY

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
Crl.A(MD)No.278 of 2017

V.P.Balasubramani : Appellant/ Complainant

Vs.

C.Krishnakumar : Respondent/Accused

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the Judgment passed by the learned Mahalir Fast Track Judge, Karur in C.A.No.77 of 2016 dated 05.01.2017 and confirm and enhanced the sentence passed by the Fast Track Court at Karur in S.T.C.No.971 of 2011, dated 26.10.2016.

For Appellant : Mr.R.Mathiyalagan

For Respondent : M/s.S.Vijayashanthi

JUDGMENT

The Judgment of conviction and sentence dated 26.10.2016 passed in S.T.C.No.971 of 2011 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur, as reversed in C.A.No.77 of 2016, dated 05.01.2017 by the learned Sessions Judge, Mahalir Fast Track Judge, Karur is being challenged in the present Criminal Revision Case.

2.The appellant V.P.Balasubramani is the complainant in S.T.C.No.589 of 2011 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Karur. According to his complaint filed under Sections 138 and 142 of N.I. Act, Krishnakumar, the respondent herein is known to him for the past 15 years. He was dealing in share market. To meet out his business exigencies, he borrowed a sum of Rs.3,15,300/- from the complainant on 09.07.2007 and agreed to pay interest at the rate of 6 paise per Rs.100/- per day and paid the interest upto 06.09.2007. In order to discharge the liability in full satisfaction, two post dated cheques dated 06.09.2007 drawn in favour of the complainant in the account maintained by the accused at Punjab National Bank, Karur Branch for Rs.1,48,100/- and Rs.1,67,200/- were issued with an assurance that the cheques will be honoured on its presentation. The cheques were presented on 06.10.2007 through Karur Vysya Bank, Main Branch by the complainant for collection. The cheques were returned unpaid as payments stopped by drawer. Statutory notice was issued to the



accused. On receipt of the notice, the accused replied denying the liability and issuance of cheque for discharging the liability. Hence, the complaint.

3. Before the Trial Court, two witnesses were examined on behalf of the complainant. 9 exhibits were marked. The accused examined one Ravichandran and marked 6 exhibits on his behalf besides through P.W.2, the copy of stop payment letter issued to the bank by the accused was marked.

4. The Trial Court disbelieved the contention of the accused that the cheques were taken away by the accused and misused for filing the complaint and having come to know about the loss of the cheques, he has intimated the bank as early on 23.01.2006, were not found to be believable by the Trial Court. Hence, convicted the accused for not rebutting the presumption under the Act and sentenced him to undergo 3 months simple imprisonment and to pay fine of Rs.2,000/- in default to undergo 15 days simple imprisonment.

5. On appeal preferred by the accused, the first appellate Court in C.A.No.77 of 2016 held that the accused has probalised his defence and shifted the burden upon the complainant to prove his case that the cheques were issued for legally enforceable debt, since the complainant has failed to prove the cheques were issued for legally enforceable debt, allowed the appeal and acquitted the accused by setting aside the Judgment of sentence and conviction imposed upon the accused.

6. Aggrieved by this, the complainant has preferred appeal before this Court on the ground that the lower appellate Court had failed to note that the accused has not disputed the borrowing or his signature in the cheques. Between the complainant and the accused, money transaction was prevailing for a long time. Nearly thousand cheques were issued by the accused and the same were honoured whereas wantonly the accused has instructed the bank to stop payment with dishonest intention of cheating the complainant. Though the Trial Court has rightly held the accused guilty, the lower appellate Court has failed to draw presumption against the accused. The inconsistent defence regarding the cheques taken by the accused should have invited adverse inference of the lower appellate court.

7. The learned counsel appearing for the appellant/complainant would submit that the accused though admits that the signature found in the cheques is of his signature and the cheques were from his account at one point of time contended that he has misplaced a cheque and therefore informed the bank to stop payment. At another instance, he has contended that the cheques were stolen when his company collapsed in the year 2005. Therefore, the Judgment of the lower appellate Court has to be set aside and the Judgment of the Trial Court has to be restored.



8. Per contra, the learned counsel appearing for the respondent/accused had submitted that the complainant had not proved his wherewithal to lend a sum of Rs.15,24,500/-, covering 11 cheques and subject matter of five criminal cases launched by the complainant, which includes the two cheques, which are the subject matter of the present appeal. The respondent as early on 23.01.2006 when came to know about missing of 15 numbers of cheques signed by him, had instructed the bank to stop payment. Besides on 03.10.2007, he had also given a public notice in Dinamalar Daily that the cheques will not be presented by any person. While so, the cheques were presented subsequent to the paper publication and the appellant had not produced any document to show that on the date of cheques, there was no transaction between them leading to enforceable debt.

9. Point for consideration:

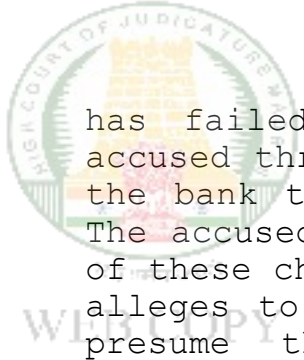
"Whether the Judgment of the lower appellate Court holding that the accused has probalised his defence is unsustainable in law?"

10. A cumulative appreciation of the evidence indicates that the appellant and the respondent were involved in money transaction for a quite long time. Hundreds of cheques issued by the respondent were honoured. It is an admitted fact that the appellant was lending money for interest and the respondent borrowed and repaid it periodically.

11. As far as the cheques, which are the subject matter of this case, the specific allegation of the complainant is that on 09.07.2007 the accused borrowed Rs.3,15,300/- and issued post-dated cheques dated 06.09.2007 for Rs.1,48,100/- and Rs.1,67,200/- respectively. But this contention per se cannot be true in the light of the communication made to the bank by the accused as early on 23.01.2006 to stop payment stating that these cheques were misplaced and every possibility of misusing by unscrupulous person.

12. As per the complaint, the accused borrowed loan of Rs.3,15,300/- on 09.07.2007. Agreed to repay the loan with interest at the rate of 6 paise per 100 rupees per day, paid interest upto 06.09.2007 a sum of Rs.11,350/-. To discharge his debt, he gave 2 cheques bearing bearing Nos.506277 and 506278 for Rs.1,48,100/- and Rs.1,67,200/- respectively, both dated 06.09.2007 on the date of borrowing itself. The two cheques were presented on 09.10.2007.

13. It is the case of the complainant that apart from these two cheques, few more cheques given by the accused around same period returned because of stop payment instruction. Further it is also the specific case of the complainant that for nearly 15 years, he is lending money to the accused for interest. For the reason best known, the complainant has failed to produce any statement of accounts. If really, he had lent money for interest to the accused for the past 15 years and towards the money borrowed on 09.07.2007, the accused paid interest of Rs.11,350/-, then there must be some record to vouchsafe this assertion. Unfortunately, the complainant



has failed to produce documents to prove it. Contrarily, the accused through documents has proved that he has forced to intimate the bank to stop payment of these cheques as early as 23.01.2006. The accused has proved through Ex.C.1 that he was not in possession of these cheques on the date it bears or on the date the complainant alleges to have received from the accused. Therefore, no one can presume that these cheques were issued to discharge debt. Therefore, this Court holds that the lower appellate Court has rightly set aside the Trial Court Judgment and dismissed the complaint. Hence, this criminal appeal is liable to be dismissed.

14.In the result, this Criminal Appeal is dismissed. The Judgment dated 05.01.2017 passed in C.A.No.77 of 2016 by the learned Sessions Judge, Mahalir Fast Track Judge, Karur is confirmed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Sessions Judge,
Mahalir Fast Track Court,
Karur.
- 2.The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Karur.
- 3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai. 2 copies

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JUDGMENT MADE IN
Cr1.A(MD)No.278 of 2017
30.10.2018