

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2018

DELIVERED ON : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.430 of 2008

V.A.Shanmugavel

...

Appellant /Complainant

Vs

K.Baskaran

...

Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment dated 23.04.2008 in C.C.No.9299 of 2005 on the file of the XV Metropolitan Magistrate, George Town, Chennai 600 001.

For Appellant : Mr.R.Selvakumar

For Respondent : Mr.K.Ravi Anantha Padmanaban

JUDGMENT

This criminal appeal is filed by the appellant against the order of acquittal dated 23.4.2008 in C.C.No.9299 of 2005 on the files of the learned XV Metropolitan Magistrate, Chennai.

2.The brief case of the Appellant:

The case of the Appellant is that the respondent/accused received a sum of Rs.4,00,000/- towards hand loan from the appellant/complainant and issued the impugned cheque for Rs.4,00,000/- dated 1.08.2005 drawn on Central Bank of India, Sinmayanagar Branch, Chennai. When the cheque was presented in the above Branch for collection the same was returned on 5.8.2005 with an endorsement of "Insufficient funds". Hence the appellant/complainant issued a statutory notice to the respondent/accused and the same was received by him. In spite of nonpayment the appellant filed the complaint under section 138 of Negotiable Instrument Act.

3. Before the trial Court, the appellant himself examined as PW 1 and the respondent/accused examined as DW1. Exhibits-P1 to P5 were marked on the side of the appellant /complainant and exhibits D1 and D2 were marked on his side. After completion of the trial, the learned trial Court acquitted the respondent/accused by holding that the appellant /complainant failed to prove the loan transactions through acceptable evidence except Exhibit P1 impugned cheque. Hence, this appeal.

4. I heard Mr.R.Selvakumar, learned counsel for the appellant and Mr.K.Ravi Anantha Padmanaban, learned counsel for the respondent and perused the entire materials available on record.

5. The learned counsel for the appellant submits that the trial Court finding is erroneous, in that though the accused have admitted the signature in the cheque, he has been acquitted. When signature in an negotiable instrument has been admitted, the presumption follows that the same had been issued towards a lawfully enforceable debt, though the said presumption is rebuttable, the rebuttable should be raised by some evidence by the accused, mere cross examination alone cannot be a rebuttal of presumption unless the accused depose his case, however legal or strong his defence may be.

6. The learned counsel for the appellant submits that the trial Court have not considered the judgment in 2008 (1) Acquittal Cases 3 (Kerala) (Kamalammal Versus C.K.Mohanan) in right perspective.

7. The learned counsel for the appellant submits that the trial Court have considered the judgment in 2001 (Supreme) Criminal 960 in a wrong perspective as the legal proposition therein vis a vis the fact of the case on hand were different.

8. The learned counsel for the appellant submits that the trial Court have failed to consider the fact that the necessity of pleading nature of transaction, mode of payment etc., would all be outweighed by the fact that the accused and the complainant are very close relatives and the same has not been considered at all by the Trial Court. The finding that it is for the plaintiff to prove that the accused gave the cheque only after receiving the consideration, is against the statutory presumption, and the same is illegal. Also the finding given by the Trial Court, that since the complainant had pleaded non remembrance about a loan transaction between the accused and one Rajendran, the case of the complainant cannot be believed as illegal. The finding that the complainant's case that he has not received any evidence in proof of payment, though he happened to be a close relative, is beyond the scope of the offence punishable under section 138 of the Negotiable Instrument Act and also against the statutory presumption.

9.The learned counsel submits that the trial Court completely failed to consider the criminal conduct of the accused that though he has closed his bank account as early as on 20.2.2004, he had issued the cheque on 1.8.2005 and that it has also been proved that he had cleared a cheque for Rs.10,000/- on 2.4.2003. The Trial Court ought to have taken cognizance of the offence of cheating also, which has been proved by documentary evidence. Moreover, issuing a cheque after closing the account is also an offence punishable under section 138 of the Negotiable Instruments Act, which the Trial Court have failed to consider in proper perspective.

10.The learned counsel for the appellant cited the following decisions:

- (1) 2017-1-L.W.(Crl.)763 (K.Dhanabakkiyam v. Ms.Thirumala Wall Decors & Suncontrols Represented by its Partner, Mr.V.Anbazhagan S/o.Vaithiyalingam, Old No.306, New No.36, Palanimalai Lane, 2nd Street, Sakthi Road, Erode-638 001 & another)
- (2) Crl.No.630 of 2014 (N.Krishnagiri v. 18 Steps Medias Private Limited)
- (3) (2008) 4 SCC 54 (Krishna Janardhan Bhat v. Dattatraya G.Hedge)
- (4) (2017)-1-L.W.(Crl.)244 (Shanmugam v. M/s.Sundaram Engineering Works, Rep. by its Partner Justin Harris Son of Mr.Rajasundaram, No.124, Sathy Road, Coimbatore-44 and another).

11.The learned counsel for the respondent objected to the contentions raised by the appellant and supported the view taken by the learned trial Court.

12.The case of the appellant is that in discharge of the debt, the respondent/accused issued the cheque for Rs.4 Lakhs and the same was dishonoured on the reason that the account was closed. The statutory notice issued by the appellant was acknowledged by the respondent/accused on 17.8.2005 and the time of 15 days was elapsed on 1.9.2005. Since no payment was received, the appellant instituted the complaint u/s 138 of Negotiable Instrument Act.

13.The appellant examined himself as PW1 and cross examined by the respondent/accused. In his evidence, he specifically deposed that the manner and details regarding the hand loan of Rs.4 Lakhs was not mentioned either in the complaint or in the sworn affidavit. But the signature contained in the cheque was admitted by the respondent/accused. Except the signature, all other averments were denied by the respondent. In fact, every cheque or liability upon which a cheque was issued was not an enforceable one. Once a cheque was signed by a drawer, he could

not absolve his liability unless he proves by evidence that the cheque was not given in discharge of liability.

14. Moreover, the presumption under section 118(a) of the Negotiable Instrument Act is against the maker and not a presumption specially in favour of a payee or the holder in due course. The presumption under Section 118 is a rebuttable one by the evidence of executants on his intention and circumstances of a given case.

15. Be that as it may, on a careful consideration of the respective contentions and in view of the fact that the appellant/complainant (PW1) had not established his case beyond all reasonable doubt that he had lent a sum of Rs.4 Lakhs to the accused. Further, the appellant/complainant in the instant case had not proved about his financial capacity to lend such a heavy sum to the respondents/accused. Hence, this Court comes to a consequent conclusion that the findings of not guilty arrived at by the trial Court in respect of the respondents/accused does not suffer from any flaw. Consequently, the criminal appeal fails.

16. In fine, the criminal appeal is dismissed and the judgment of the trial Court in C.C.No. 9299 of 2005 on the files of the learned XV Metropolitan Magistrate, Chennai, dated 23.04.2008 is confirmed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The XV Metropolitan Magistrate,
George Town, Chennai-600 001.

2. do Thro The Chief Metropolitan Magistrate,
Chennai.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.101

Criminal Appeal No.430 of 2008

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