

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2018

DELIVERED ON : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.310 of 2009

K.R.Chinnappan Appellant /Complainant

Vs

S.R.Neelakandan Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the judgment rendered by the learned Additional District Munsif-cum-Judicial Magistrate, Ambur in C.C.No.56 of 2008 dated 09.04.2009 acquitting the accused.

For Appellant : Mr.D.Rajagopal

For Respondent : Mrs.S.Sujatha
Legal Aid Counsel

JUDGMENT

This Criminal appeal is preferred by the appellant against the judgment rendered by Learned Additional District Munsif cum Judicial Magistrate, Ambur in C.C.No.56 of 2008 dated 09.04.2009 wherein the learned trial judge acquitted the Respondent/accused under section 138 of the Negotiable Instruments Act.

2.The brief case of the appellant:

The case of the appellant/complainant is that, on 21.1.2008 the Respondent/accused issued the impugned cheque for Rs.75,000/- bearing No.0760249 drawn on Bank of Baroda, Vellore Branch towards the hand loan availed from the appellant/complainant and he presented the said cheque on 21.01.2008 in his bank. On 23.1.2008 the impugned cheque was dishonoured and the same was informed to the appellant/complainant on 24.01.2008. On 30.01.2008 statutory notice was issued to the Respondent/accused. On 08.02.2008 the said notice was returned with endorsement Respondent/accused not

available. Without sufficient funds in the bank, the Respondent/accused issued the cheque in order to cheat the appellant thereby committed the offence under section 138 of Negotiable Instruments Act.

3.The appellant/complainant filed the complaint before the learned Additional District Munsif Cum Judicial Magistrate Ambur in C.C.No.56 of 2008. In this case, appellant/ complainant examined himself and five Exhibits were marked on his side. On behalf of the respondent /accused, he examined himself and no documents were marked. After conclusion of trial, the learned Judicial Magistrate acquitted the accused stating that the appellant/complainant failed to prove the offence under Section 138 of Negotiable Instruments Act. Hence this appeal.

4.I heard Mr.D.Rajagopal, learned counsel for the appellant and Mrs.S.Sujatha, learned Legal Aid Counsel for the respondent and perused the entire materials available on record.

5.The learned counsel for the appellant/complainant submitted that after dishonour of the cheque, the appellant issued legal notice to the respondent in the correct address calling upon the respondent to pay the cheque amount within fifteen days of receipt of the said notice. The said notice was returned as addressee not available. It is an admitted fact that appellant sent the notice to the correct address the respondent also admitted in his cross examination that the address written on the cover is a correct address.

6.The learned counsel for the appellant/complainant submitted that the Learned Judicial Magistrate is wrong in holding that the main ingredient of section 138 has not been compiled. It is submitted that it has been held by various High Courts as wells the Hon'ble Apex Court that once a notice has been issued by the complainant to the drawer of the cheque to the correct address and the same has been proved in the trial even the notice has been returned section 138 of Negotiable Instruments Act will attract. So in this case the complainant proved that he sent the notice with the correct address. This was not disputed by the respondent also. Therefore, the said judgment is liable to be set aside.

7.The learned counsel for the appellant/complainant submits that it has been held by Hon'ble Supreme Court which was reported in 2007 CC DC page No.253 that the returned envelope was annexed in the complaint and it thus informed part of the complaint which showed that the notice was sent by registered post with acknowledgement due to the correct address and was returned with an endorsement that the addressee was abroad. In this view that section 138 of Negotiable Instrument the Act had been sufficiently complied. In this case also the above said judgment squarely applies. The Learned trial Judge without considering this simply acquitted the accused.

8.The learned counsel for the appellant/complainant submits that the Learned Judicial Magistrate wrong in holding that legally enforceable debt has not been proved. In this regard it is submitted that the complainant deposed in his evidence that he has given the amount to the respondent this was not denied by the respondent in his evidence. Further the respondent also admitted in his evidence that there is a transaction between the complainant and the respondent. So Section 138 of Negotiable Instrument Act clearly Attracts.

9.The learned counsel for the appellant/complainant submits that at any rate of the judgment should be rendered by Learned Judicial Magistrate is unsound, not correct and the same is liable to be set aside.

10.Per contra, it is the submission of Smt.S.Sujatha, Learned Legal-Aid Counsel for the Respondent/Accused that the Appellant/Complainant had not satisfied the ingredients of Section 138 of the Negotiable Instruments Act, 1881. Furthermore, it is represented on behalf of the Respondent that the Appellant/Complainant had issued Ex.P4 Legal Notice in a defective fashion and in view of the technical defect while issuing Legal Notice, the trial Court had rightly opined that the Appellant/Accused had failed to establish his case and consequently, found him not guilty resulting in an acquittal under Section 255(1) of Cr.P.C.

11.In the instant case, Exhibit.P4 undelivered registered notice sent on behalf of the appellant to the respondent bears the endorsement "addresses not available" made by the postal authorities. The fact that the registered notice sent on behalf of the appellant to the respondent is refused to accept by the respondent is not disputed. Therefore, the presumptions under Section 27 of the General Clauses Act as well as Section 114 of

the Evidence Act are available in favour of the appellant in this case. Section 27 of the General Clauses Act raises a presumption of due service or proper service, if the letter sought to be served is sent properly addressed, pre-paid and posted by registered post to the addressee. Under Section 114 of the Evidence Act the Court may presume that when in a particular case a letter is sent by post pre-paid and properly addressed, the same is received by the addressee in the ordinary and common course of business. When the presumption of due and proper service under Section 114 of the Evidence Act and Section 27 of the General Clauses Act is drawn it also raises the presumption that the addressee can be imputed with the knowledge of the contents of the registered notice. Therefore a presumption arises that when the notice had been sent to the respondent at his current address and it had been properly addressed, when it was not claimed by him, it is deemed to have been served on the respondent.

12. It is next found in the order passed by the learned trial judge that at any rate it has not been established that the cheques had been issued for the due discharge of a legally enforceable debt/liability. It is to be seen that the impugned cheque was signed, executed and handed over by the respondent/accused to the appellant/complainant. It is not the law at all that in a prosecution under Section 138 of the Negotiable Instruments Act, the appellant/complainant must establish the original cause of action in meticulous details. That is precisely why the presumption under Section 139 of the Negotiable Instruments Act has been incorporated in addition to the presumption under Section 118 of the Evidence Act which was already there. It is unnecessary to refer to the various precedents that have been cited at the Bar. I need only reiterate that once the signature, execution and handing over of the cheque is satisfactorily proved by the evidence by the appellant/complainant, presumption under Section 139 of the N.I. Act comes into play and the same holds the field until the respondent/accused discharges the burden on him at least by the inferior standard of preponderance of possibilities and probabilities as applicable in a civil case. Initial presumption has to be raised in favour of the appellant/complainant under Section 118 of the Negotiable Instruments Act. In the present case there being absolutely no rebuttal evidence, the execution of Exhibit. P-1 having been proved, the amount mentioned in the cheque was liable to be paid by the respondent/accused.

13. Therefore the ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act having been proved in the present case accused was liable to be convicted.

14. For the above said reasons:

(a) this criminal appeal is allowed by setting aside the Judgment passed by the Learned Additional District Munsif cum Judicial Magistrate, Ambur in C.C.No.56 of 2008 dated 09.04.2009;

(b) the respondent/accused is convicted for 3 months Simple Imprisonment with fine of Rs.5,000/-;

(c) the respondent/accused is directed to pay a sum of Rs.75,000/- as compensation to the appellant/complainant;

(d) the learned Additional District Munsif cum Judicial Magistrate, Ambur is directed to secure the accused for undergone the punishment.

15. The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Smt.S.Sujatha, Legal Aid Advocate.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Munsif-cum-Judicial Magistrate,
Ambur.

2. The Member Secretary,
Tamil Nadu State Legal Services Authority,
High Court, Madras.

+1cc to M/S.D.Rajagopal, Advocate Sr.111

+2cc to M/S.S.Sujatha, Advocate sr.53

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