IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.09.2019
Pronounced on:13.09.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.729 of 2009

T.Russel Raj ...Appellant / Complainant

Vs.

1.Varamangai

2.Chandrasekar ... Respondents/ A1 & 2

PRAYER: Criminal Appeal has been filed under Section 378 of Criminal Procedure Code to call for the records of the case in C.C.No.9493 of 1999 on the file of the V Metropolitan Magistrate, Chennai, dated 14.08.2009, set aside the acquittal and sentence the respondent / accused.

For Appellant : Mr.V.K.Sathiamurthy

For Respondents : Mr.L.V.Rohith
Amicus Curie

J U D G M E N T

This Criminal Appeal has been filed by the appellant to call for the records of the case in C.C.No.9493 of 1999 on the file of the V Metropolitan Magistrate, Chennai, dated 14.08.2009, set aside the acquittal and sentence the respondent / accused.

2.Though this Criminal Appeal was filed in the year 2009, till date the appellant did not take any steps to serve copies to the respondent / accused. Considering the long pendency of the case, this Court appointed Mr.C.V.Rohit, learned counsel as Amicus Curie to conduct this case.

3.The case of the prosecution is that the Appellant had filed a private complaint under Section 138 of Negotiable Instruments Act, as against the respondents 1 & 2. The same has been taken cognizance in C.C.No.9493 of 1999 before the V Metropolitan Magistrate, Egmore, Chennai. The learned

Magistrate after an elaborate trial had acquitted the respondents by the Judgment dated 14.08.2009, against which, the present Criminal Appeal has been preferred.

4.For the sake of convenience, the parties are hereinafter referred to in this judgment as they are arrayed before the Trial Court.

5.The case of the prosecution is that the Accused No.1 is the wife of Accused No.2. The accused have borrowed a sum of Rs.1,00,000/- from the complainant on 24.07.1998 for their urgent needs and towards repayment of the loan amount, the accused herein had issued a cheque bearing No.174952 dated 02.08.1999 signed by both of them in the joint account of Tamil Nadu State Apex-Co-operative Bank Ltd., Shenoy Nagar Branch, Chennai-30 for Rs.1,00,000/- and assured that the said cheque will be honoured on presentation. On believing the words of the accused, the complainant presented the cheque for collection through his Banker HDFC Bank Ltd., Anna Nagar, Chennai-40 on 02.08.1999. The said cheque was not honoured and returned to the complainant on 05.08.1999 for the reasons "funds insufficient". Thereafter, a statutory notice was sent to the accused on 14.08.1999. The 1st Accused received the said notice on 16.08.1999. The 2nd Accused, knowing the contents of the notice refused to receive the same and the said notice was returned as "not claimed" on 30.09.1999. The accused had neither replied the notice sent by the complainant nor repaid the loan amount borrowed from him. Thereafter, a complaint came to be filed before the V Metropolitan Magistrate, Egmore, Chennai, on 28.09.1999 in C.C.No.9493 of 1999. The complainant had examined himself as PW1 and marked Ex.P1 to Ex.P7. The accused had examined three witnesses DW1 to DW3 and marked Ex.D1 to Ex.D7.

6.The learned counsel appearing for the complainant / appellant would contend that the accused persons are known to the complainant. The accused approached the complainant for their urgent needs and borrowed a sum of Rs.1,00,000/- and on receipt of the same, they executed a promissory note signed by the 1st accused i.e. Ex.P1. The accused failed to return the borrowed amount of Rs.1,00,000/-. After several remainders for the repayment of the loan amount, both the accused have jointly signed the cheque for a sum of Rs.1,00,000/- i.e. Ex.P2 and handed over the same to the complainant. When the cheque was presented to the Bankers for collection, it was returned for the reasons "funds insufficient". Thereafter, statutory notice was sent to the accused. The 1st accused after receipt of the notice has not chosen to reply the same. The 2nd accused, who is none other than the husband of the 1st accused knowing the contents of the notice, refused to receive the same. Hence, a complaint has been preferred as against the accused herein. The learned counsel relied upon the decision held in (2016) 10 Supreme Court Cases, 458 in Sampelly Satyanarayana Rao V. Indian Renewable Energy Development Agency Limited in Crl.A.No.867 of 2016.

7.The learned counsel for the appellant would submit that the said cheque was issued to the complainant for the security purposes, in repayment of the balance chit amount cannot be countenanced. The handing over of the pronote has not been disputed and the signatures of the accused in the cheque is also not disputed. The defence raised by the accused is that the DW1 is one of the subscribers to the chit conducted by the complainant and he also handed over signed blank cheque and had deposed against the complainant. DW1 further stated that a case against him u/s.138 of Negotiable Instruments Act came to be settled later. If the contention of DW1 is true there is no necessity for DW1 to settle the issue with the complainant. The accused have not produced any documents to show that they have repaid the debt.

8.The learned counsel would further contend that in view of the settlement arrived between DW1 and the complainant, Ex.D2 to Ex.D4 marked through DW1 cannot be relied on. The 2nd Accused, has examined himself as DW2 and through him D5 and D6 have been marked. DW3 is the Inspector of Police, CCB. Ex.D7 / F.I.R. in Crime No.290/2001 is marked. This F.I.R later culminated as C.C.No.10720. The Complainant is the Accused in the F.I.R. nothing more could be said.

9.The learned counsel would further submit that the accused admitted about the issuance of the cheque. In view of the Section 20 of the Negotiable Instruments Act, once the signed cheque had been handed over, the holder of the cheque has authority to fill up the same. The presumption u/s.118 & 139 of Negotiable Instruments Act is in favour of the complainant. The accused have not proved or produced materials that they have repaid the chit amount or any amount to the complainant. The liability is not discharged. In view of the same, the accused ought to have convicted by the Trial Court. On a wrong premise and on the sole ground that there are difference in the ink of the writings in the pronote and relying on the evidence of DW1 & DW2 and Ex.D1 to Ex.D7 and also taking into consideration that there was a chit transaction between the accused and the complainant had wrongly acquitted the accused and which is a perverse finding which has to be set aside.

10.The learned Amicus Curie appearing for the accused submits that the complainant is in the practice of foisting false cases against the chit subscribers fraudulently to extract money from the innocent persons. The accused herein are also the subscribers to the Chit. They have received only a part amount of the Chit after deductions and the balance chit had been paid for which the complainant issued receipts Ex.D6 series are few of these receipts. The complainant had not approached the Court with clean hands. He has totally denied about carrying on the business of chit. The accused produced the ROC Certificate, passbook, receipts of the chit not only of the accused but of the other chit subscriber, by examining DW1 and marking defence exhibits, the accused has propabalized his defence and rebutted the evidence of the complainant. The complainant failed to prove the case beyond reasonable doubt. The learned counsel also relied upon the decision of the Hon'ble Supreme Court of India in Basalingappa Vs.Mudibasappan dated 09.04.2019 in Crl.A.No.636 of 2019. Accordingly, prays for dismissal of the Appeal.

11.The copies were furnished to the accused under Section 207 Cr.P.C. The particulars of offence alleged were explained to him on 12.06.2006. The accused denied of having committed the offence. In order to prove the case, the complainant examined himself as PW1 and Exhibits P1 to Ex.P7 were marked by PW1. The accused was questioned under Section 313(1)(b) of Cr.P.C. The accused denied the charges and claimed to be tried. The accused was examined himself as DW2. Ex.D1 to Ex.D7 were marked on their side. After elaborate trial, the learned V Metropolitan Magistrate, Chennai in C.C.No.9493 of 1999 has dismissed the complaint on 14.08.2009 and acquitted the accused. Challenging the same, the appellant / complainant has preferred the present Criminal Appeal in Crl.A.No.729 of 2009.

12.Heard the learned counsel appearing for the appellant / complainant and the learned Amicus Curie.

13.On a perusal of entire records, it is seen that PW1 in his evidence interalia reiterated his version as in the complaint and marked about 7 documents on his side. Ex.P1 is the Promissory Note, Ex.P2 is the cheque issued by the accused. Ex.P3 is the cheque return memo. Ex.P4 is the debit advices dated 05.08.1999 of the HDFC Bank, Anna Salai, Chennai. Ex.P5 is the statutory notice dated 14.08.1999. Ex.P6 is the acknowledgement card and Ex.P7 is the refusal notice returned to the complainant.

14.The deposition of PW1 and perusal of the documents marked on his side reveals that the subject instrument was issued by the accused in favour of the complainant / appellant on 02.08.1999. The said instrument was presented for clearance on 02.08.1999 and the same was returned with an endorsement "insufficient funds" on 05.08.1999. The accused were able to expose the complainant's false claim that the complainant has not come up with clean hands. D.W.3, the Inspector of Police, CCB stated about the criminal case pending against the complainant, for extracting money from the innocent subscribers. The Trial Court on proper analysis of evidence produced by the defence had found that the accused have spoken the truth and the cheque issued to the complainant during the chit transactions had been misused by the complainant and a complaint u/s.138 of Negotiable Instruments Act had been filed. The Trial court after proper analysis had acquitted the accused.

15.The appellant / complainant has miserably failed to prove that there was a legally enforceable debt for which the subject cheque was issued for discharging the said legally enforceable debt. In the absence of evidence that there was a legally enforceable debt, for which the said cheque was issued, this Court has no other option, except to accept the verdict of the learned V Metropolitan Magistrate, Egmore, Chennai 600 008.

16.Above all, it is well settled principle that an order of acquittal need not be interfered with by the Appellate court unless it is shown that an order of acquittal was recorded by the trial Court by considering irrelevant material or without application of mind to the relevant materials. In fact, the Honourable Supreme Court in (Murugesan and others vs. State through Inspector of Police) 2012 SCW 5627 has held that, in case of an appeal against acquittal, the presumption of innocence available to the accused has been reinforced by such order of acquittal and it need not be slightly interfered with. In yet another decision of the Hon'ble Supreme Court reported in (Hydru vs. State of Kerala) (2004) 13 Supreme Court Cases 374 it was held that, an order of acquittal need not be interfered with by the higher Courts unless, there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court.

17.Having regard to the above parameters laid down by the Hon'ble Supreme Court in the above decisions, this Court is of the view that the order of acquittal recorded by the V Metropolitan Magistrate, Egmore, Chennai does not suffer from any illegality or infirmity warranting interference of this Court.

18.In view of the categorical position, the Trial Court had elaborately got into the evidence of both complainant and defence witnesses and exhibits, thereby, had rightly acquitted the accused. Hence, this Court does not warrant interference in the judgment passed by the learned V Metropolitan Magistrate, Egmore Chennai-8 in C.C.No.9493 of 1999 dated 14.08.2009.

19.In the result, this Criminal Appeal stands dismissed. The judgment passed by the learned V Metropolitan Magistrate, Egmore, Chennai-8 in C.C.No.9493 of 1999 dated 14.08.2009 stands confirmed. Consequently, connected miscellaneous petition if any is closed

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The V Metropolitan Magistrate
Egmore, Chennai 600 008

2. The Public Prosecutor
High Court of Madras

3.The Section Officer
Criminal Section
High Court of Madras

+2cc to Mr.C.Rajan Advocate, SR.No.78622

Crl.A.No.729 of 2009

Kak(17/10/2019)