

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2018

DELIVERED ON : 02.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.800 of 2011

Arulanandham

...

Appellant

Vs

Muniraj

...

Respondent

Prayer:

Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the order of acquittal dated 21.07.2011 made in C.A.No.2 of 2008 on the file of Additional Sessions Judge, Krishnagiri.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.A.Balamurugan

JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed by the learned Additional Sessions Judge, Krishnagiri in C.A.No.2 of 2008 dated 21.07.2011 reversing the judgment of conviction and sentence passed by the learned judicial magistrate No.II, Hosur in C.C.No.53 of 2006 dated 53 of 2006.

2.The brief case of the appellant:

On 18.7.2005 the respondent/accused borrowed a sum of Rs.1,50,000/- towards his urgent needs from the appellant and issued a post dated cheque bearing No.239157 dated 12.08.2005 from Canara Bank, Hosur on 17.2.2005. The appellant/complainant presented the cheque in Tamil Nadu Mercantile Bank, Hosur, and the same was returned as "exceed arrangement" on 19.12.2005. Hence, appellant/complainant issued a statutory notice on 30.12.2005 and the respondent/accused received the same on 31.12.2005 and sent reply dated 12.01.2006 with false allegations. Hence, the complaint was filed under section 138 of Negotiable Instrument Act.

3.Before the learned Trial Court, the appellant examined

himself as PW1 and Exhibits P1 to P7 was marked. The respondent/accused examined himself as DW1 and DW 2 and marked Exhibits D1 and D2.

4. On careful perusal of records, the learned trial Court convicted the respondent/accused for the offences under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year with fine of Rs.5,000/- in default to undergo further period of 3 months simple imprisonment.

5. Aggrieved over this, the respondent/accused preferred appeal before the learned Additional District Sessions Court, Krishnagiri in C.A.No.2 of 2008 and the learned lower appellate Court was pleased to reverse the findings of the trial Court and acquitted the respondent/accused. Hence the special leave to appeal was sought by the appellant and same was allowed by this Court.

6. The learned counsel for the appellant submits that the order of acquittal passed by the Lower Appellate Court is against law, weight of evidence and all probabilities of the case and liable to be set aside.

7. The learned counsel for the appellant submits that the Lower Appellate Court has failed to note that the execution of the cheque had not been denied, while so it is the burden on the part of the appellant to rebut the presumption arises under section 118 and 139 of Negotiable Instrument Act.

8. The learned counsel for the appellant submits that the reason adduced by the Lower Appellate Court is implausible and same would not fall in the ambit of probable defense. The Court below had simply acquitted the appellant that since all other cheque leaves of the same book to that of the Exhibit P1 was honored.

9. The learned counsel for the appellant submits that the reasons adduced by the Lower Appellate Court is not correct and the respondent herein had himself stated in the reply and the trial that he met with an accident and in view of the same there is no transaction in the year as alleged in the complaint. But he was not able to substantiate his defense version which has been raised by him and the trial Court after analyzing of the

witnesses had found him guilty for the offence under section 138 of Negotiable Instrument Act.

10.The learned counsel for the appellant submits that the Lower Appellate Court had erred in allowing the appeal for unsound reasons which cannot be countenanced both in facts and law. The reversal of the lower appellate Court is based only on the surmises not on the evidence. Only a smoke of suspicion alone was attempted to be created by the respondent herein and the lower appellate Court without viewing the veracity of the said ground had simply acquitted the appellant.

11.The learned counsel for the appellant submits that the Lower Appellate Court failed to note the presumption raised as per section 139 of Negotiable Instrument Act is of mandatory presumption and the words 'unless the contrary is proved' which occur in this provision makes it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible.

12.The learned counsel for the appellant submits that the Lower Appellate Court went wrong in simply accepting the defense version even without knowing the veracity of the said statement.

13.It is settled law that under section 378 of Cr.P.C. this Court has full powers to review this evidence upon which the Order of acquittal is based. In the instant the Lower Appellate Court acquitted the respondent by not properly appreciating both factual and legal position, which apparently appeared to be extraneous. Such finding of acquittal apparently is based upon erroneous view or the result of ignoring legal and admissible evidence with the result that the findings arrived by the Lower Appellate Court is held to be erroneous.

14.Per contra, the Learned Counsel for the Respondent would submit that the Learned Trial Court failed to appreciate the evidences in a proper perspective and the lower appellate Court has rightly held that the appellant/complainant has not come with clean hands and allowed the appeal filed by the Respondent/Accused.

15.I heard Mr.M.Guruprasad, learned counsel for the Appellant and Mr.A.Balamurugan, learned counsel for the respondent and perused the materials available on record.

16.The point to be decided in this appeal is whether the

Lower Appellate Court is right in holding that Appellant failed to prove his case and acquittal of the respondent/accused.

17.The defence taken by the respondent/accused is that the wife of the complainant namely Rani was working in Canara Bank and she was running a chit and the accused joined as a subscriber in the chit and availed the chit amount in auction and he handed over signed blank cheque in the year 2002 and the complainant has filed a false case based on Exhibit P1 cheque which was handed over to his wife as blank cheque.

18.The learned trial Court after appreciating the evidences adduced by both parties held that the signature contained in Exhibit P1 cheque stands admitted by the respondent/ accused. Therefore the complainant gains the legal presumption that the Exhibit P1 was drawn for consideration and the said cheque was issued in the discharge of whole or part of any debt or liability and convicted the respondent/accused for the offence under Section 138 of the N.I. Act.

19.The learned lower appellate Court reversed the findings of the trial Court by holding that the accused is not expected to prove his defence beyond reasonable doubt, as is expected of the complainant in a criminal trial.

20.For considering the rival submissions made on either side, this Court has to look into the following documents as well as evidence adduced on either side. The cheque, in question, has been marked as Ex-P1 in both cases. Return memo issued by the concerned Bank has been marked as Ex-P2 and copy of legal notice dated 30.12.2005 has been marked as Ex-P3 in both cases. From a cumulative reading of the evidence given by the complainant, the Court can easily come to a conclusion that the cheque in question is supported by consideration. Exhibit P1 was issued by the respondent/accused and therefore it is for him to prove as to how the cheque reached the hands of the appellant/complainant. There is a legal presumption under section 20 of the Negotiable Instrument Act empowering the holder to fill up the instrument. Hence there is no material alteration. Therefore, it is needless to say that the impugned cheques, in question are supported by consideration.

21.The lower appellate Court rightly held in judgment that the cheque Number of Exhibit P1 is 239157 and the respondent/accused was using the cheque leaves corresponding to

Exhibit P1 with successive Numbers in the year 2002 and all the cheque leaves were exhausted in the year 2002 itself and from the year 2003 - 2004, 2004-2005 he was using other cheque books and Exhibit D2 would show that there was no transaction in the year 2002 and Exhibit P2 was not denied by the appellant and further from Exhibit D2 it is crystal clear that Exhibit P1 cheque would not have been issued by the respondent/accused in the year 2005 and for all the reasons the learned trial Court erroneously found the respondent/accused guilty and set aside the judgment.

22.This Court on careful perusal of all the evidences and documents could not find any valid reason to interfere with the findings of the lower appellate Court.

23.Therefore, this criminnal appeal filed by the appellant is dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

The Additional Sessions Judge,
Krishnagiri.

+lcc to M/S.A.Balamurugan, Advocate, S.R.No.134

Criminal Appeal No.800 of 2011

RGN (Co)
CS/14/03/2019

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