IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.02.2019

CORAM
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.816 of 2011

R.Sengodan ..Appellant

Vs

R.Balakrishnan ..Respondent

Prayer:- This Criminal Appeal is filed under Section 378 Cr.P.C., against the acquittal of the respondent by the judgment and order dated 12.01.2011 by the learned Additional Sessions Judge (FTC No.1) Salem, setting aside the conviction under Section 138 of the Negotiable Instruments Act as amended by Act of imposed by the learned Judicial Magistrate No.4, Salem and the sentence of 1 year simple imprisonment and the fine amount of Rs.5,000/- recorded by his judgment and order dated 05.03.2010 in C.C.No.242 of 2001.

For Appellant : No Appearance

For Respondent : Mr.B.Vasudevan

JUDGMENT

This Criminal Appeal arising out of the reversing judgment passed by the Appellate Court in the matter of private complaint, for offence under Section 138 of the Negotiable Instruments Act.

2.The brief facts of the case leading to the Criminal Appeal is as follows:-

The appellant has advanced a sum of Rs.4,36,000/- as part payment towards the sale agreement dated 17.06.1999 to one Murugesan. Later, the complainant came to know that the property which he intend to purchase is subjected to mortgage which was not disclosed to him by his vendor. Murugesan had received the money as Power Agent of one Tamilarasan. Without disclosig the encumbrance in the property, advance money was received by Murugesan. Having suppressed the said fact, the complainant has lodged a police complaint to the Deputy Superintendent of Police, District Crime Branch, Namakkal. As a result, the accused Balakrishnan and Tamilarasan were called to Police Station. In the presence of panchayatdars, four cheques each for Rs.1,00,000/- drawn on Corporation Bank Singalandapuram Branch in order to discharge the liability were issued by the accused. Since the accused was not able to honour those four cheques in time, fifth cheque for belated payment was given subsequently.

3.At the request of the accused, the cheques were presented on 20.03.2001. The same was returned on 31.02.2001. After issuing the statutory notice dated 12.04.2001, a complaint has been lodged for offence under Section 138 of the Negotiable Instruments Act.

4.The complainant has examined himself as P.W.1 and marked 15 exhibits in his support. The accused has examined himself as D.W.1 and marked one document as Ex.B.1.

5.The trial Court held the accused guilty for offence under Section 138 of the Negotiable Instruments Act. It held that the subject cheques were issued by the accused to discharge a legally enforceable debt. Having convicted the accused, it imposed sentence of one year simple imprisonment and fine of Rs.5,000/- in default to undergo two months simple imprisonment.

6.Aggrieved over the conviction and sentence, the accused has preferred Criminal Appeal No.48/2010 on the file of the Additional District and Sessions Judge, Salem. The Appellate Court, on re-appreciation of evidence has found that Ex.A.3 - a receipt for Rs.4,80,000/- is given by one Tamilarasan towards part consideration of the agreement to sell.

7.According to the complainant, the subject cheques Exs.A.6 to A.9 were voluntarily given by Balakrishnan in order to discharge the liability of his friend Tamilarasan and Ex.A.10 the 5th cheque was given to the complainant to compensate the delay in honouring the earlier four cheques. However, the defence taken by the accused is that the cheques were extracted from him under threat and duress by lodging criminal complaint by the complainant. The Appellate Court on cumulative appreciation of the evidence arrived at the conclusion that there is no possibility of giving the subject cheques to the complainant to discharge any legally enforceable debt. The Appellate Court has pointed out that even according to the complainant, he had no transaction with the accused and the money was not given to the accused towards the part payment of the alleged transaction. While so, the complainant has failed to prove that Exs.A.6 to A.10 were given by the accused to discharge the legally enforceable debt or liability. Observing so, the Appellate Court has reversed the finding of the trial Court and acquitted the accused.

8.The present Criminal Appeal is filed by the aggrieved complainant on the ground that the Appellate Court ought not to have given undue importance to the discrepancy in the complainant case regarding the place of delivery of the cheques. The Appellate Court has failed to consider the fact that when the complainant approached Tamilarasan to refund the money which was paid to Murugesan towards part sale consideration, the said Tamilarasan revoked the power of attorney given to Murugesan in order to cheat the complainant. This led to lodging a complaint before the police. The subject cheques were issued by the accused/respondent herein as a result of the panchayat convened. The accused as a friend of Tamilarasan came forward to discharge the liability of Tamilarasan and has issued the cheques, however, they were bounced for want of fund. If the accused/respondent had no liability, then, he need not have issued the cheques or atleast, he should have responded to the statutory notice issued by the complainant denying his liability. Having failed to respond to the statutory notice, the implicit admission of the liability ought to have been presumed by the Court. While the trial Court has rightly convicted the accused, the Appellate Court has failed to draw the presumption and has reversed the well considered judgment of the trial Court.

9.The learned counsel for the respondent would contend that it is incorrect to say that the accused failed to reply denying the liability. In the reply notice, which has been marked by the complainant himself as Ex.A.15, he has succinctly narrated the circumstances under which the cheque leaves were extracted from him. The portion of the reply notice - Ex.A.15 also read over by the learned counsel for the respondent.

10.Though the Negotiable Instruments Act provides presumption of enforceable debt, it is a rebuttable presumption. The accused even at the first instance has denied the execution of the cheques for discharging any debt and also positively placed on record that those five cheques were forcibly taken away from him, in the presence of Police and only after extracting the cheques Tamilarasan was allowed to go from the custody of the Police. Having discharged his initial burden, it is for the complainant to prove his case that the accused Balakrishnan had any legally enforceable debt to be discharged.

11.Admittedly, the money was not given to the respondent. There must be some strong reason for the respondent to give five cheques carrying different dates in favour of the complainant. When there is no privity of contract between the complainant and the accused, the remoteness spoken by the complainant for issuance of cheques in his favour by the respondent accused should be supported by acceptable evidence.

12.In this case, except the friendship between Tamilarasan and Balakrishnan (the accused), there is no other reason attributed for the accused to give cheques. The case of the respondent has been proved by the admission of the complainant himself that there was a complaint against Tamilarasan and the accused herein was called to the station during the panchayat. This proves the fact that cheques were given under duress and no valid contract flows.

13.In the light of the above fact, the judgment of the Appellate Court perfectly in accordance with the evidence and the law. This Court finds no reason to interfere the judgment of the Appellate Court.

14.In the result, the Criminal appeal is dismissed. The judgment passed by the Appellate Court in Criminal Appeal No.48 of 2010 dated 12.10.2011 is hereby confirmed and the conviction and sentence imposed by the trial Court on the respondent herein are set aside. The respondent/accused is acquitted and if any fine amount paid, the same shall be returned to the accused, on application.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Judicial Magistrate No.4,
Salem.

2.The Additional District and Sessions Judge (FTC No.1),
Salem.

Crl.A.No.816 of 2011

KS(CO)

RRS(29/04/2019)