

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2019

PRONOUNCED ON : 19.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.499 of 2012

G.Dhanasekar ..Appellant/Complainant

Vs

T.A.Jayaprakash ..Respondent/Accused

Prayer:- This Criminal Appeal is filed under Section 378 Cr.P.C., against the judgment of acquittal of the respondent dated 17.04.2012, rendered by the learned V Additional Sessions Judge Chennai in Crl.A.No.241 of 2011 against the judgment of conviction for offence under Section 138 of the Negotiable Instruments Act, rendered by the learned IX Metropolitan Magistrate, Saidapet, Chennai in C.C.No.8771 of 2007 dated 24.11.2011 sentencing the respondent to undergo one year simple imprisonment.

For Appellant : Mr.Nagaraju

For Respondent : Mr.Annamalai Athiaman

JUDGMENT

This Criminal appeal is directed against the reversing judgment of the First Appellate Court arising out of Section 138 of the Negotiable Instruments Act.

2.The brief facts of the case, leading to this Criminal Appeal, are as under:-

The appellant who is the complainant in C.C.No.8771/2007 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, had lent a sum of Rs.10 lakhs to one T.A.Jayaprakash (accused/respondent). To discharge the said liability, the accused issued three cheques in favour of the complainant. These cheques were drawn on Central Bank of India, Choolai Branch.

These cheques were presented for collection, on 20.06.2007, the same were returned with an endorsement "account closed".

3. Notice regarding the return of the cheques were issued to the accused on 02.07.2007. The accused received the notice on 03.07.2007 and gave his reply denying the liability. Hence, complaint under Section 138 of the Negotiable Instruments Act alleging that the following cheques:

- "1. Cheque No.123503 dated 31.05.2007 for Rs.5,00,000/-
- 2. Cheque No.123504 dated 31.05.2007 for Rs.2,00,000/-
- 3. Cheque No.123517 dated 20.06.2007 for Rs.2,00,000/-"

marked as Exs.P.1 to P.3 issued for discharging the legally enforceable debt had been returned with an endorsement "account closed". To the legal notice Ex.P.5, the complainant has given frivolous reply vide Ex.P.7. Hence, the accused is liable to be punished.

4. The trial Court has taken the complaint on file, examined the complainant as P.W.1 and marked Exs.P.1 to P.7 on the side of the prosecution. No witness was examined but, Exs.D.1 to D.4 were marked on the side of the defence. The trial Court concluded that the accused is guilty of offence under Section 138 of the Negotiable Instruments Act, and sentenced him to undergo one year simple imprisonment.

5. Aggrieved by the said finding and conviction of the trial Court, the accused has preferred an appeal before the Court of Sessions, Chennai, in Criminal Appeal No.241/2011 wherein, the First Appellate Court considering the defence taken by the accused reversed the finding of the trial Court. Allowed the appeal, dismissed the complaint and acquitted the accused.

6. Aggrieved by the order of acquittal by the First Appellate Court, the complainant is before this Court by way of an appeal.

7. Heard both sides. Records perused.

8. The trial Court considering the content of the complaint and the evidence let in by the complainant as against the defence taken by the accused has held that both the accused and the complainant are known to each other. The complainant was the power of attorney for the accused land transaction. The cheques were given to discharge the debt. The trial Court rejected the case that the complainant has misappropriated the money of the accused during the course of land transactions. The blank cheques given by the accused to accommodate the said transactions were misused by the complainant. Criminal complaint was given against the complainant before the Vepery Police

Station. It held that while accused admits the execution of the cheque and money transaction between them, it has to be presumed that the complainant has proved there is a legally enforceable debt between the complainant and the accused.

9. Contrarily, the First Appellate Court on re-appreciation of evidence relied upon, the answers elicited during cross examination of P.W.1 that the three cheques were given to him to pay taxes and compensation to the tenants for vacating the premises. The admission of the complainant regarding the criminal complaint given by the accused against him before Vepery Police Station on 04.06.2007 in respect of blank cheques and jewels. The purchase of the accused property by the sister-in-law of the accused through the accused as mediator. The execution of power of attorney Ex.D.1 in favour of the complainant in respect of the property at D.No.243 Choolai High Road owned by the accused transfer of that property in favour of one Palanisamy based on the power of attorney deed Ex.D.1. Took these factors and other answers elicited in the cross examination in connection with the transactions between the accused and the complainant and held that the admissions made by P.W.1 coupled with evidence of Exs.D.1 to D.4 proves the fact he was acting as an Agent of the accused and entered into sale agreements and executed several agreements and sale deeds on behalf of the accused and had received sale consideration. If so, without rendering the account as Power Agent to the principal, he had misused the blank cheques given to him.

10. When the complainant has not rendered the account for the transactions done by him on behalf of the accused, issuance of cheques marked as Exd.P.1 to P.5 is highly doubtful. Therefore, at length, after discussing the law on fact, the Lower Appellate Court has concluded that the complainant has not prima facie proved the liability. Contrarily, the accused has rebutted the presumption by elucidating evidence in his favour during cross examination of P.W.1. Hence the judgment of the trial Court needs to be set aside.

11. On perusing the judgments of the Courts below, the factum of principal agent relationship clearly established through the defence exhibits. When there is principal agent relationship, unless and until the material evidence are placed to prove legally enforceable debt, mere issuance of cheques cannot lead to the presumption under Section 139 of the Negotiable Instruments Act.

12.The trial Court while failed to consider the defence exhibits, the First Appellate Court has gone to the content of the defence exhibits D.1 to D.5 coupled with the fact that the points elicited during cross examination of P.W.1 wherein he admits the transaction done by him on behalf of the principal/accused and non rendition of account.

13.Therefore, the inference of the First Appellate Court that Exs.D.1 to D.5 ought to have been given for payment of taxes and compensation to the tenants for vacating the premises, is more likely to be true. Having rebutted the reverse burden, the advantage of presumption under Section 139 of the Negotiable Instruments Act, is not available for the complainant. In this case, the First Appellate Court has rightly appreciated the evidence placed before it which the trial Court has failed to do so.

14.In the circumstances, this Court finds no merit in the appeal and accordingly, the Criminal Appeal is dismissed and the judgment passed by the First Appellate Court is confirmed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The V Additional Sessions Judge,
Chennai.

2.The IX Metropolitan Magistrate,
Saidapet, Chennai.

3.The Public Prosecutor,
High Court, Chennai.

4.The Criminal Section,
High Court, Madras.

+1 cc to Mr.P.Nagaraju, Advocate, S.R.No.26231

+1 cc to Mr.Annamalai Athiaman, Advocate, S.R.No.26897

CrI.A.No.499 of 2012

NMI (CO)
SSM(15/04/2019) .