

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2019

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.A.NOS.898, 899 AND 900 OF 2012

Kasinathan

.. Appellant/Respondent
Complainant in all appeals

Vs.

Vijaya Sekar

.. Respondent/Appellant
Accused in all appeals

Prayer in Crl.A.No.898 of 2012:

Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of the Additional District and Sessions Judge No.III, Tirupattur, Vellore District made in C.A.No.28 of 2010 dated 29.06.2012 in setting aside the judgment of the Additional District-cum-Judicial Magistrate, Ambur, Vellore District made in C.C.No.208 of 2008 dated 14.09.2010.

Prayer in Crl.A.No.899 of 2012:

Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of the Additional District and Sessions Judge No.III, Tirupattur, Vellore District made in C.A.No.27 of 2010 dated 29.06.2012 in setting aside the judgment of the Additional District-cum-Judicial Magistrate, Ambur, Vellore District made in C.C.No.207 of 2008 dated 14.09.2010.

Prayer in Crl.A.No.900 of 2012:

Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of the Additional District and Sessions Judge No.III, Tirupattur, Vellore District made in C.A.No.26 of 2010 dated 29.06.2012 in setting aside the judgment of the Additional District-cum-Judicial Magistrate, Ambur, Vellore District made in C.C.No.206 of 2008 dated 14.09.2010.

For Appellant : Mr.T.R.Ravi
For Respondent : Mr.P.Kannan Kumar

COMMON JUDGMENT

These appeals are directed against the judgment of the Additional District and Sessions Judge No.III, Tirupattur, Vellore District in C.A.Nos.26, 27 and 28 of 2010 dated

29.06.2012 in setting aside the judgment of the Additional District-cum-Judicial Magistrate, Ambur, Vellore District in C.C.Nos.206, 207 and 208 of 2008 dated 14.09.2010.

2. For the sake of convenience, the parties will be referred to as complainant and accused.

3. It is the case of the complainant that the accused was his very close friend and that the accused had borrowed huge amounts from him on various dates for the marriage of his (accused's) son and daughter. It is the further case of the complainant that he (complainant) had borrowed monies from various persons like one Sukumar for giving hand loans to the accused, but the accused did not return those amounts and the complainant had to pay from his pocket to settle the debts incurred by him. However, on 03.01.2008, the accused borrowed a sum of Rs.3,00,000/- and gave a promissory note promising to return the principal without interest. On 04.02.2008, the accused gave three post-dated cheques bearing the dates 03.05.2008, 05.05.2008 and 10.05.2008, each for Rs.1,00,000/-, and collected back the promissory note from the complainant. When the complainant presented those three cheques, on the respective dates mentioned therein, all the three cheques were returned with the endorsement "Funds Insufficient". Therefore, the complainant issued three statutory demand notices to the accused for which the accused gave three reply notices repudiating the debt, pursuant to which the complainant filed three prosecutions, namely C.C.Nos.206, 207 and 208 of 2008 before the Additional District Munsif-cum-Judicial Magistrate, Ambur, Vellore District under Section 138 of the Negotiable Instruments Act, 1881, against the accused.

4. The complainant examined himself as PW1 in each of the cases and marked Exs.P1 to P11. When the accused was examined under Section 313 Cr.P.C, he denied the same. No witness was examined on the side of the accused and one document, namely Ex.D1, the Passbook of the complainant, was marked.

5. After considering the evidence on record and hearing either side, the trial Court, by three separate judgments dated 14.09.2010, convicted the accused of the offence under Section 138 of the Negotiable Instruments Act and in each case, he was sentenced to undergo simple imprisonment for 12 months and a compensation of Rs.1,00,000/- in each case was directed to be paid to the complainant. Challenging the same, the accused filed three appeals, namely C.A.Nos.26, 27 and 28 of 2010, which were heard by the Additional District and Sessions Court III, Tirupattur, Vellore District and were allowed by three separate judgments dated 29.06.2012. Challenging the acquittal, the complainant has filed the present three appeals.

6. Heard Mr.T.R.Ravi, learned counsel for the appellant/complainant and Mr.Kannan Kumar, learned counsel for the respondent/accused.

7. Mr.T.R.Ravi, learned counsel for the appellant/complainant submitted that the grounds on which the First Appellate Court had acquitted the accused are on the face of it perverse especially in the light of the law laid down by the Supreme Court recently in Uttam Ram Vs. Devinder Singh Hudan & Another (C.A.No.1545 of 2019 decided on 17.10.2019).

8. Per contra, Mr.Kannan Kumar, learned counsel for the respondent/accused submitted that the Appellate Court had gone deep into the evidence on record and had given cogent reasons for acquitting the accused. He further laid reliance on the judgment of the Supreme Court in Arulvelu and another Vs State and another [(2009)10 SCC 206] and contended that when two views are possible the view that favours the accused merits consideration.

9. This Court gave its anxious consideration to the rival submissions.

10. It is the specific case of the accused that the complainant is his close friend and that he had not borrowed any money from the complainant and that complainant wanted him to oblige him by giving three blank, but signed cheques to him to show to the said Sukumar that he would soon receive money and he would settle the amounts due to him (Sukumar).

11. Mr.Ravi, learned counsel for the appellant/ complainant contended that this defence of the accused appears to be very flimsy and is not plausible.

12. However, Mr.Kannan Kumar, learned counsel for the respondent/accused took this Court through the evidence of the complainant (PW1) and in the cross-examination of PW1, Exs.P9, P10 and P11 were marked. Exs.P9, P10 and P11 are petitions in O.S.No.105 of 2008 relating to the civil suit filed by the complainant against this accused for recovery of a sum of Rs.5,45,000/- which the accused is said to have borrowed from the complainant earlier. This suit is pending on the file of the District Court, Vellore at the time when the complainant was cross-examined by the accused. The amount of Rs.5,45,000/- mentioned in that suit does not cover Rs.3,00,000/- which the accused is said to have borrowed from the complainant on 03.01.2008. Therefore, Mr.Kannan Kumar, learned counsel submitted that when the complainant had not received Rs.5,45,000/- from the accused for which he had to file a suit, it is unbelievable that he would have given a loan of

Rs.3,00,000/- on 03.01.2008 on a promissory note and would have returned the promissory note on 04.02.2008 on the accused giving three post-dated cheques.

13. There appears to be sufficient force in the submission of Mr.Kannan Kumar. The fact is that the complainant filed a Civil Suit in O.S.No.105 of 2008 against the accused for recovery of Rs.5,45,000/- that he had given as loan earlier. When that being so, the contention of the complainant that he lent Rs.3,00,000/- on a promissory note on 03.01.2008 and that when the accused gave three post-dated cheques on 04.02.2008, he returned the promissory note to the accused, sounds Gilbertian. Though the presumption under Section 139 of the Negotiable Instruments Act, 1881 will enure to the advantage of the complainant, yet it is trite that the accused can discharge the burden by preponderance of probability as held by the Supreme Court in Rangappa Vs Sri Mohan [2010 (4) CTC 118].

In view of the above, this Court does not find any infirmity in the orders of acquittal dated 29.06.2012 passed by the Additional District and Sessions Judge No.III, Tirupattur, Vellore District in C.A.Nos.26, 27 and 28 of 2010 warranting interference. Therefore, these criminal appeals are dismissed. The amount, if any, deposited by the accused in the trial Court shall be refunded to him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa

To

1. The Additional District and Sessions Judge No.III, Tirupattur, Vellore District.
2. The Additional District-cum-Judicial Magistrate Ambur, Vellore District.
3. The Public Prosecutor Madras High Court, Chennai.

CRL.A.Nos.898, 899 and 900 of 2012

PVS (CO)
CS/10/12/2019