IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 11.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.472 of 2013

K. Mohamed Ali ...Appellant/Complainant

Vs

S. Prabhakaran ...Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of the code of Criminal Procedure against the Judgment of the Principal District and Sessions Judge, Coimbatore dated 17.09.2012 made in C.A.No.36 of 2012 reversing the Judgment of the Judicial Magistrate-cum-Fast Track Court at the Magisterial Level II, Coimbatore dated 27.01.2012 made in CC No.205 of 2011.

For Appellant : Mr. B. Pachiappan for M/s.T.Gowthaman

For Respondent : Ms. Ezlilarasi for M/s.Thanga Vadhana Balakrishnan

J U D G M E N T

This Criminal Appeal is directed against the reverse Judgment of the Lower Appellate Court. The matter is arising out of the Private Complaint under Section 138 of Negotiable Instrument Act.

2. The main point in this case is the Private Complaint filed by K. Mohamed Ali against S. Prabhakaran for dishonour of cheque, was allowed by the trial Court. Whereas, the lower Appellate Court considering the defence documents namely Journal Book of TTE, has accepted the plea of the accused that on 10.05.2008, the date on which the money alleged to have been borrowed from the complainant, he was on duty at Chennai and not at Coimbatore.

3. The case of the complainant is that he and the accused are known to each other. To construct a house, the accused borrowed Rs.2,50,000/- on 10.05.2008. To discharge the loan, he gave a cheque for the said amount on 15.09.2008. When it was

presented for collection on 16.09.2008, it returned with an endorsement "insufficient funds". Statutory notice was issued to the accused on 16.10.2008 and the same was received on 20.10.2008. Despite the receipt of notice, the accused did not reply and he did not pay the cheque amount. On the side of the defence, the accused has examined DW 1, Chief Ticket Examiner in the railways and has produced 9 Exhibits. As travel booking examiner in the Southern Railway, the accused has boarded the train at Coimbatore bound to Chennai on 19.10.2008 and he was on duty on 20.10.2008 and returned to Coimbatore on 21.10.2008.

4. Exhibits Ex.D1 to Ex.D3 marked through DW-1 are pages relating to the Journal book maintained by TTE. As per this document, on 09.05.2008, the accused went on duty as Examiner from Coimbatore to Chennai, he returned from Chennai to Coimbatore on 11.05.2008 since he was on line on 10.05.2008 at Chennai, borrowal of Rs.2,50,000/- from the complainant at Coimbatore on 10.05.2008 is not probable. The trial Court has considered the averment made in the complaint, accepted the case of the complainant. It rejected the plea of the accused, who denied the borrowing of the money, issuance of cheque and his signature in the cheque, and receipt of statutory notice.

5. On appeal, the lower Appellate Court has relied upon the defence documents accepted the alibi stated by the accused. On the date of borrowing the money as well as on the date of receipt of statutory notice, the lower Appellate Court held that through Ex.D.1 to Ex.D.9, the accused has proved that he was not in Coimbatore on 10.05.2008, the alleged date of borrowing and on 20.10.2008, the alleged date of receiving statutory notice.

6. Aggrieved by the said order of the lower Appellate Court, the present appeal is filed.

7. The learned Counsel appearing for the appellant/complainant would submit that the accused denied issuance of the cheque and the receipt of the statutory notice. The trial Court has compared the signature found in postal acknowledgment and on the cheque. Found that both were signed by one and the same person. Later, during the cross examination, the accused admitted that the cheque belongs to his account and could not prove the signature in the cheque is not his signature. Therefore, the trial Court has rightly held that the accused after issuing the Cheque to discharge his debt falsely denying the debt and execution of cheque. While so, the lower Appellate Court has relied upon the documents Ex.D.1 to Ex.D.9 to accept the plea of the accused alibi.

8. As far as Ex.D1 to Ex.D.3, which are the photocopies of Railway Journal book compared by the trial Court with the original one. It is pertaining to the travel details of the

accused on 19.10.2008, 20.10.2008 and 21.10.2008. Similarly Ex.D4 to Ex.D6, Railway travel Book compared with original are the photo copies of the travel details of the accused on 09.05.2008, 10.05.2008 and 11.05.2008. The Register of Booking of TTE for the same period is Ex.D.7 to Ex.D.9. These documents at the most indicates that the respondent was on duty on 19.10.2008 and 21.10.2008 whereas the statutory notice was received by the accused on 20.10.2008. Similarly these documents proved that the accused boarded train in Coimbatore at 2.00pm on 09.05.2008 and reached Chennai on the same day. He boarded train to Coimbatore on 11.05.2008 at 2.00am. These documents does not prove that on 10.05.2008, when the money was alleged to be borrowed by the accused at Coimbatore, he was not in Coimbatore and elsewhere. Likewise, these documents does not prove that on 20.10.2008, when the accused alleged to receive the statutory notice, he was not in Coimbatore but elsewhere. Just because the accused boarded train on 08.05.2008 at Coimbatore and boarded train at Chennai on 11.05.2008, it does not mean that in between, he did not visit Coimbatore. Between 19.10.2008, 11.00pm and 21.10.2008, 2.30am, a person could have traveled to Coimbatore and back to Chennai. There is no possibility of alibi, as projected by the accused. The documents Ex.D1 to Ex.D9 does not provide alibi for the appellant for the crucial dates.

9. From Ex.D.1 to Ex.D.9 at the most, the accused could establish the fact that he traveled from Coimbatore to Chennai on 09.05.2008. He boarded train at Coimbatore at 2.00pm landed at Chennai around 10.00pm. He has boarded train at Chennai at 2.00 am on 11.05.2008 reached Coimbatore after about 8 hours journey. Through these evidences, the accused has not explained his whereabouts on 10.05.2008.

10. The learned Counsel appearing for the respondent/accused would submit that the trial Court has referred EX.D.7 Register and has observed that the accused was on duty (on line) along with DW.1 on 10.05.2008 and it is corroborated by the entry in Ex.D.5 Travel Register. Ex.D.7 is the Register of booking of TT on 09.05.2008 and Ex.D.5 is the Register travell book photo copy for 10.05.2008. They are not corroborating each other. While Ex.D.5 is pertaining to 10.05.2008, Ex.D.7 pertaining to 09.05.2008. No doubt, the accused has proved the fact through Ex.D.1 to Ex.D.9, that on 19.10.2008 and 21.10.2008, he was on duty (on line). Similarly on 08.05.2008 and 11.05.2008, he was on duty (on line). But on 20.10.2008 and 10.05.2008 admittedly, he was not in on duty (on line).

11. The learned Counsel for the respondent would submit that under Southern Railways, TTE should have atleast 20 hours break up for attending next duty. That does not mean that he should take rest and no possibility of undertaking any work or

travel. What is proved by the accused is only on 09.05.2008, 11.05.2008, 19.10.2008 and 21.10.2008, he was on duty. More particularly, the date on which he received the statutory notice 20.10.2008 and the date on which he alleged to borrowed money 10.05.2008, there is no evidence let in by him to show he was on duty (on line). The lower Appellate Court has miserably failed to understand and appreciate the evidence and documents properly. He has been mislead by documents produced by the accused.

12. In the light of the above discussions, this Court finds that the error and illegality of the lower Appellate Court is bound to be set aside. Accordingly, this Criminal Appeal is allowed. The order of the lower Appellate Court is set aside. The trial Court Judgment is restored. Period of sentence already undergone by the respondent/accused shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

vrn

To

1. The Principal District and Sessions Judge,
   Coimbatore.

2. The Chief Judicial Magistrate Court,
   Coimbatore.

3.The Judicial Magistrate-cum-
Fast Track Court at the Magisterial Level II,
Coimbatore.

+1cc to Mr.Thanga Vadhana Balakrishnan, Advocate, S.R.No.23104
+1cc to Mr.T.Gowthaman, Advocate, S.R.No.22920

Criminal Appeal No.472 of 2013

NMT(CO)

RRS(23/04/2019)