

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.616 of 2013

V. Karuppasamy

Appellant/Complainant

Vs

S. Babu

Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of the code of Criminal Procedure, praying praying to set aside the Judgment made in C.A.No.68 of 2012 dated 12.03.2013 on the file of learned District Principal Sessions Judge, Krishnagiri reversing the Judgment dated 19.10.2012 made in STC No.103 of 2011 on the file of Judicial Magistrate Fast Track Court, Hosur.

For Appellant : No appearance

For Respondent : Mr.S.Gunalan

J U D G M E N T

This Criminal appeal is directed against the Judgment of acquittal of the lower Appellate court under Section 138 of Negotiable Instrument Act proceedings.

2. Today when this Criminal appeal is taken up for consideration, no representation for the appellant/complainant. The learned Counsel for the respondent/accused present. The records perused.

3. According to the appellant / complainant, the respondent borrowed Rs.2,00,000/- to meet out his family expenses and to discharge the said debt, he gave a cheque for Rs.2,00,000/-. When the cheque was presented for collection on 14.06.2011, it was returned as unpaid due to "Insufficient funds". The statutory notice was issued by the complainant to the accused. On receipt of the notice, the accused gave his reply dated 06.07.2011 denying the liability. Therefore, the complaint under Section 138 of Negotiable Instrument Act was filed before the trial Court. The complainant was examined as PW 1 and 7 exhibits were marked. On the side of the defence, 3

witnesses were examined and 3 exhibits were marked. The trial Court accepted the case of the complainant that the cheque was issued to discharge the legally enforceable debt and convicted the accused to undergo 6 months simple imprisonment and to pay a compensation of Rs.2,10,000/- in default to undergo 1 month simple imprisonment. Aggrieved by that, the accused has preferred an appeal before the Sessions Court, Krishnagiri.

4. The lower Appellate Court after re-appreciating the evidence, has considered the deposition of DW-1 to DW-3 and defence documents, particularly the reply given by the accused to the statutory notice and perused the police complaint given by the accused against one Balaraman, who was working along with him in Ashokleyland, Hosur and threatening him to take advantage of the blank cheque given to him as security for the loan availed from him. Particularly, the lower Appellate Court considering the defence taken by the accused in his reply statement and the ignorance of the complainant even to say a very rudimentary details in the cross examination about the accused to whom he has advanced Rs.2,00,000/-. Disbelieved the case of the complainant that subject cheque was given to the complainant for discharge of legally enforceable debt, the very privity of the contract between the complainant and the accused was doubted by the Appellate Court and dismissed the complaint by allowing the appeal.

5. The present appeal is against the order of the lower Appellate Court. It is contended by the complainant in the grounds of appeal that the lower Appellate Court has related the complaint Ex.D.3 against Balaraman with that of the subject cheque issued to Karuppan, shifted the onus on the complainant to prove the legally enforceable debt, despite the statutory presumption under Section 139 of Negotiable Instrument Act.

6. The case of the complainant is that the subject cheque was given by the accused to discharge the hand loan of Rs.2,00,000/-. It was post dated cheque. The complainant has specifically stated that he and the accused are known to each other for more than 5 years. While, the complainant is running a tea stall, accused is employed in Ashokleyland in Hosur. When statutory notice dated 22.06.2011 was issued to the accused, he has promptly replied under Exhibit P.7, wherein he has categorically stated how and to whom the subject cheque was given by him. He has specifically stated that the complainant is a stranger. The cheque issued to Balaraman co-worker has now been misused by the complainant. To fortify his defence, when the complainant was in the witness box, during the cross examination, certain basic questions were put to the complainant, for which the complainant could not reply. This indicates that the complainant and the accused were not known to

each other as contended in the complaint and there was no necessity for the accused to issue cheque in favour of the complainant for a huge sum of Rs.2,00,000/-.

7. The findings of the lower Appellate Court based on the evidence is legally sustainable. The complainant, except the cheque, return memo and the notice, could not further substantiate this case through any other corroborative evidence. Particularly, the accused by examining himself and 2 other witnesses and 3 documents including police complaint given against Balaraman regarding his threat to misuse the blank cheque issued to him, put together, discharge the burden on the accused. When the prima facie presumption under Section 139 of Negotiable Instrument Act has been successfully discharged by the accused, the complainant ought to have proved the enforceable debt covered under the subject cheque. In this case, the complainant has miserably failed to prove the enforceable debt or liability. Hence, the lower Appellate Court has dismissed the complaint.

8. In the light of the above discussion, this Court finds that there is no illegality or perversity in the Judgment of the Court below. Hence, this Criminal appeal is dismissed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The District Principal Sessions Judge, Krishnagiri
2. The Chief Judicial Magistrate, Hosur
3. The Judicial Magistrate Fast Track, Hosur.
4. The Section Officer, Crl. Section, Records,
High Court, Madras.

+1cc to Mr.S.Gunalan, Advocate SR.No.17867

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BR(CO)

GMV(01/04/2019)