IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE DR.G.JAYACHANDRAN

Criminal Appeal No.808 of 2013

P. Ravichandran ... Appellant/Complainant

Vs

R. Anand ... Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378(4) of the code of Criminal Procedure, to set aside the Judgment dated 20.06.2013 made in C.A.No.65 of 2012 on the file of I Additional Sessions Court, Salem reversing the Judgment dated 06.07.2012 made in CC No.231 of 2008 on the file of the Judicial Magistrate No.V, Salem.

For Appellant : Ms. Zeenath Begum

For Respondent : Mr. R.Nalliyappan

JUDGMENT

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

2. The brief facts of the case is that the Complainant and the accused were in Film Distribution Trade and in the Course of the transaction, on 21.12.2005, the accused borrowed a sum of Rs.4,00,000/- from the complainant and agreed to repay the same with 16% interest per annum. Since the accused failed to repay the loan amount, despite several reminders, the complainant had given a police complaint. Based on that, the parties have arrived at terms and according to that terms, the accused has issued two post dated cheques each for Rs.50,000/-. On presentation, the first cheque was honoured by the accused, whereas the second cheque dated 15.11.2007 dishonoured, against which the complainant has preferred the complaint under Section 138 of Negotiable Instruments Act.

3. Before the trial Court, the complainant has produced 8 documents and examined himself as PW-1. On the side of the defence, the accused has marked 5 documents.

4. The main contention of the accused was that pursuant to the loan transaction, he has already given a cheque for Rs.4,00,000/- and Promissory Note. Though he has cleared all the debts, the complainant tried to extract more money under the guise of interest and police complaint. In the police station, the accused was forced to give five post dated cheques under duress and threat. He also honoured the first cheque. Thereafter, he issued notice through the counsel, under which circumstances the cheques were obtained from him and his intention not to honour the further cheques, which were obtained under duress.

5. The trial Court after considering the contention of the complainant and the accused, has held that having issued two cheques and honouring one cheque, denying the due execution of the two cheques is only a after thought. He has not established the fact that the subject cheque was obtained through police under duress and threat. Therefore, the trial Court held the accused guilty and convicted him to undergo one year rigorous imprisonment and imposed a fine of Rs.5,000/- in default one month simple imprisonment.

6. Aggrieved by the said conviction and sentence, the accused has preferred an appeal before the Additional District and Sessions Court, Salem in C.A.No.65 of 2012. The lower Appellate Court reversed the finding of the trial Court holding the contention of the accused that the subject cheque was obtained from him under duress and threat is probable. When the cheque issued for repayment of loan not presented, and the cheque obtained through short cut method by lodging police complaint for recovery of loan cannot be utilized to initiate the Criminal prosecution. Hence, the lower Appellate Court has set aside the conviction and dismissed the complaint.

7. Against the Judgment of the lower Appellate Court, the complainant has preferred the present Criminal Appeal on the ground that the cheque issued by the accused for discharge of enforceable debt. Questioning the voluntariness of the cheque is an after thought and if really the cheque was obtained under threat, nothing prevented the accused to report about the matter to the higher authorities. The trial Court while rightly rejected the defence, the lower Appellate Court has failed to consider the fact that the cheque was issued voluntarily to discharge the enforceable debt. But carried away by the fact

that the cheque was issued after complaint given to the police.

8. Heard the Counsels at length.

9. No doubt, any cheque given involuntarily is doubtful and presumption under Section 139 of Negotiable Instrument Act cannot be drawn. Issuance of the cheque in the presence of police officials or pursuant to the police complaint is also highly doubtful. In this case, this court is able to find that the monetary transaction between the accused and the police is admitted. The accused even admits that he has given a cheque for Rs.4,00,000/- as a Security to the complainant and he contends that the cheque was misused by the complainant to be presented in the name of one T.Kumar of Kallakurichi and further contention is that the defence exhibits Ex.D.1 to Ex.D3 obtained through RTI from the police record would go to show that the subject cheque was not issued voluntarily. In fact, the lower Appellate Court has also agreed to the contention raised by the Counsel appearing for the respondent. But, the different point which has been brought to the notice of the lower Appellate Court is that, the accused having admitted the liability could not show any document, when he has discharged that liability, he admits that five cheques were given to the complainant each for Rs.50,000/- and one of the cheque was also honoured by him. The second cheque is the subject matter of this appeal.

10. The tenor of documents Ex.D1 to Ex.D3 does not indicate that the parties to the document were influenced by the police. It does not appear to be given under threat or duress. The Assistant Commissioner of Police, Salem ought not to have entertained the complaint given by the complainant. But having entertained, since the parties have agreed to settle the matter, he recorded the same and closed the complaint. Now, by issuing the cheque, accused agreed and admitted the liability. If really there was any undue influence, threat, coercion and whatever the factor which could vitiate the undertaking, the accused should have promptly acted upon it.

11. When, questioning the counsel for the respondent as to whether there is any other proceedings initiated by the complainant for recovery of the loan amount, the learned Counsel for the respondent emphatically respond with “NO”. In such circumstances,when there is an admitted liability on the part of the accused and no other material placed before this Court, prima facie to presume that the said liability was discharged, because the subject cheque was issued after complaint given to the police, the voluntariness of the cheque cannot be doubted for the sake of doubt.

12. Therefore, this Court finds that the lower Appellate

Court relied upon the general principle and has reversed the trial Court Judgment, without considering the specific facts of the present case.

13. In view of the above discussions, this Criminal Appeal is allowed. The trial Court Judgment of conviction is confirmed. As far as the sentence is concerned, this Court holds that it is needless to send the accused to prison. Instead, the sentence of the trial Court is modified to the effect that the respondent herein shall pay a fine of Rs.50,000/-, which shall be the compensation amount to the complainant, indefault the accused shall undergo imprisonment for a period of one month.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

vrn

To

1. The I Additional Sessions Judge, Salem

2. -do - Through' The Principal Sessions Judge, Salem.

3. The Judicial Magistrate No.V, Salem.

4. - Do- Through' The Chief Judicial Magistrate, Salem.

5. The Public Prosecutor, High Court, Madras

Copy To : The Section Officer, Criminal Section,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.No.23765

+1cc to Ms.Zeenath Begum, Advocate SR.No.24169

Criminal Appeal No.808 of 2013

SV(CO)
GMY(10/04/2019)