

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 05.10.2018	Date of pronouncing Judgment 16.10.2019
--	--

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.95 of 2013

R.Krishnan .. Appellant/Respondent/Complainant

Versus

P.Navaneethakrishnan ... Respondent/Accused

Appeal filed u/s.378 (1) of Cr.P.C. against the Judgment dated 20.07.2012 made in C.A.No.268 of 2011 on the file of the Court of IV Additional District and Sessions Judge, Coimbatore, in reversing the order of conviction dated 23.11.2011 made in C.C.No.219 of 2011 on the file of the Court of Judicial Magistrate/Fast Track Court at Magistrate Level II, Coimbatore (STC No.1310 of 2006 of Judicial Magistrate No.7, Coimbatore).

For Appellant : Mr.N.S.Sivakumar

For Respondent : Mr.Peer Mohamed
(No appearance)

Judgment

The appellant herein is the complainant and the respondent is the accused in C.C.No.219 of 2011 on the file of the learned Judicial Magistrate/Fast Track Court at Magistrate Level II, Coimbatore.

2. The appellant had filed a private complaint under Section 200 Cr.P.C. for the offence under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate/Fast Track Court at Magistrate Level - 2, Coimbatore, against the respondent. The learned Magistrate, after taking the complaint on file in STC No.1310 of 2016 and after completing the formalities, enquiry and trial, found the respondent guilty of the offence under Section 138 of the Negotiable Instruments Act and convicted him and sentenced him to undergo one year Simple Imprisonment and to pay fine of Rs.5,000/- in default to undergo four months Simple Imprisonment. Challenging the said judgment of the learned

Magistrate, the respondent had filed appeal before the learned Principal Sessions Judge, Coimbatore. The learned Principal Sessions Judge, after completing the formalities, taking the appeal on file in C.A.No.268 of 2011 and made over the same to the learned IV Additional District and Sessions Judge, Coimbatore, for disposal.

3. The learned IV Additional District and Sessions Judge, Coimbatore, allowed the appeal and set aside the judgment of the learned Judicial Magistrate / Fast Track Court at Magistrate Level - 2, Coimbatore.

4. Challenging the said judgment of the learned IV Additional District and Sessions Judge, Coimbatore, in C.A.No.268 of 2011 dated 20.07.2012, the complainant has filed the present appeal before this Court.

5. The learned counsel for the appellant would submit that the respondent admitted the signatures found in the cheque and also admitted the money transaction with the appellant and only denied the legally enforceable debt. Once the accused admitted the execution of cheque and also admitted the signature therein, then initial burden has been shifted to the accused and the accused has to rebut the presumption under Section 139 of the Negotiable Instruments Act. Once the execution of the cheque is admitted, the legal presumption is that the cheque has been issued to discharge legally enforceable debt or liability. No doubt, the said presumption under Section 139 of the Negotiable Instruments Act is rebuttable presumption. In this case, the accused has not rebutted the presumption. Though the learned Magistrate found that the respondent/ accused has not rebutted the presumption and found the respondent guilty for the offence under Section 138 of the Negotiable Instruments Act, the lower Appellate Court failed to consider the oral and documentary evidence adduced by both the parties and failed to consider the legal presumption and wrongly allowed the appeal and set aside the judgment of the learned Magistrate, which warrants interference of this Court.

6. The learned counsel for the respondent would submit that though the respondent admitted the signature found in the cheque and the transaction that only he borrowed a sum of Rs.20,000/-, but not borrowed a sum of Rs.7,20,000/- and even in the evidence they have stated that they had financial crunch due to one of their sister Latha died and further submitted that figure '7' has been inserted in the cheque before Rs.20,000/-, therefore, the expert himself has opined that the ink written as '7' is different and therefore, the respondent has rebutted the presumption and though the learned Magistrate failed to consider the fact that the appellant has not proved his case and the respondent has rebutted the presumption, the lower appellate Court rightly appreciated the evidence and came to the

conclusion that the respondent herein has not committed any offence under Section 138 of the Negotiable Instruments Act, therefore, he set aside the judgment of the learned Magistrate and allowed the appeal; There is no reason to interfere with the judgment of the lower appellate Court.

7. The learned counsel for the respondent would also submit that it is well settled proposition of law that the legal presumption can be rebutted, either by direct evidence or preponderance of probabilities. In this case, the respondent has rebutted the presumption by preponderance of probabilities. The lower appellate Court rightly appreciated the evidence and given a finding that the complainant/appellant has not proved his case and the respondent/accused is not found guilty for the offence under Section 138 of the Negotiable Instruments Act. Further, it is settled proposition of law, on time and again, as observed by the Hon'ble Supreme Court in various decisions, that unless the finding of the trial Court are perverse or contrary to the material on record, the High Court cannot, in appeal, substitute its finding merely because another contrary view is possible on the basis of material on record. The learned counsel for the respondent has also placed reliance on the judgment of the Hon'ble Supreme Court reported in 2008 (4) SCC 54 in the case of "Krishna Janardhan Bhat ..vs.. Dattatraya G.Hegde" and also the High Court of Bombay reported in 2009 (1) DCR 420 : 2008 ALL MR (Cri.) 2694 in the case of "Anjana Balkrishna Shewale ..vs.. Chayya Baban Jagdale and another". Legally as well as factually, there is no merit in the appeal and therefore, the appeal is liable to be dismissed.

8. Heard both sides and perused the records.

9. It is the case of appellant/complainant in this case that the respondent/accused is liable to pay Rs.7,20,000/- in view of the chit transaction and loan obtained from the appellant and his sisters on different dates and hence, on demand of return of debt, the respondent had issued cheque bearing No.867392 for a sum of Rs.7,20,000/- dated 31.08.2005 and when the cheque was presented for collection on 05.02.2006, the same was returned for the reason of 'insufficient funds' on 07.02.2006 and thereafter, notice was sent on 10.02.2006 and the notice was returned with an endorsement as "gone out" and hence, the appellant had filed private complaint under Section 200 of Cr.P.C for the offence under Section 138 of the Negotiable Instruments Act. Though the trial Court convicted the respondent, the appellate Court set aside and acquitted him and therefore, the appellant/ complainant is before this Court.

10. On reading of the entire materials, though the appellant has stated that there is money transaction between the appellant and the respondent from 23.08.2004, his both sisters were the subscribers in the chit fund run by the respondent.

Apart from that, the sisters had lent money to the accused along with the complainant. When the appellant and his sisters demanded money, the respondent issued a cheque for Rs.7,20,000/- drawn on Vijaya Bank dated 31.08.2005 and since after representation, the same was dishonoured, after sending statutory notice, the appellant filed the complaint. But during examination, the respondent has stoutly denied the transaction and though he admitted the cheque and also only borrowed a sum of Rs.20,000/, but stated that the appellant has inserted Number '7', before Rs.20,000/- and even, the appellant during his cross examination has stated that there is a financial crunch and due to that, his sister Latha died and further, though he admitted that there is a documentary proof to show that there was a chit transaction between the appellant and his sisters with the respondent, but none of the document has been produced before the Court. Further, the appellant has stated that he and his sisters pledged their jewels and lent money to the respondent, but, for which also, they have not produced any document to show that they raised the fund by pledging the jewelleries and lent money to the respondent. Therefore, the lower appellate Court has reappreciated the entire evidence during trial and found that the appellant has not proved his case even though the respondent admitted the signature and execution of the cheque only for a sum of Rs.20,000/- and not for Rs.7,20,000/- and once the execution of cheque is admitted and proved, though there is a legal presumption under Section 139 of the Negotiable Instruments Act that the cheque was issued to discharge legally enforceable debt or liability, but at the same time, the said presumption is a rebuttable presumption.

11. It is settled proposition of law that rebuttal can be either by direct evidence or through preponderance of probabilities or probable defence, even otherwise, the rebuttal can be done during the cross examination of witnesses. So in this case, though the respondent admitted the execution of cheque and also admitted the signature, at the same time, through preponderance of probabilities, he has rebutted the presumption that expert has opined that number '7' before Rs.20,000/- written in different ink. Further, the appellant has not proved their means when the respondent denied their means and also the appellant admitted that one of his sisters Latha died due to financial crunch. When that being the case, it is not proved how she could had lent money to the respondent. Further, the appellant has not produced any document though he admitted that there is a document to show there was a chit transaction between the appellant and the respondent and the respondent has to make payment for the subscribers due. Though the trial Court invoked the provision of Section 139 of the Negotiable Instruments Act and found that the appellant proved his case and the respondent has not rebutted the presumption, whereas the lower appellate Court, being the final Court of fact finding, reappreciated the entire evidence and found that the

respondent has rebutted the presumption in the manner known to law and further, the burden has been shifted to the appellant and the appellant has not proved that even though he admitted that he lent money by pledging their jewellerys, no documents were produced to show that they pledged the jewellerys and further, he admitted that they have the document to show that there is a chit transaction and note book for the same, they have not produced them. Therefore, the appellate Court extended the benefit of doubt in favour of the accused. It is also well settled proposition of law that the prosecution/complainant has to prove their case beyond reasonable doubt, whereas in this case, the respondent has raised a reasonable doubt by way of rebutting the presumption. Therefore, under these circumstances, though the trial Court convicted the respondent, the lower appellate Court as fact finding Court has reappreciated the entire evidence and set aside the order of learned Magistrate and acquitted the respondent.

12. As stated by the learned counsel for the respondent and the judgment relied on by him, it is well settled that the view of acquittal could have been reasonably arrived at, then mere circumstances, the lower appellate Court would have taken a different view would be no ground to interfere. In this case also, as stated by the learned counsel for the respondent unless the finding of the Courts below are perverse or controversial to the material on record, the High Court, in appeal, cannot substitute its finding merely because another controversial opinion is possible on the material on record. In this case, this Court does not find any perversity in the finding of the lower appellate Court and there is no merit in the appeal and the appeal is liable to be dismissed and accordingly, the appeal is dismissed.

13. In the result, the Criminal Appeal stands dismissed and the Judgment of acquittal dated 20.07.2012 made in C.A.No.268 of 2011 on the file of the Court of IV Additional District and Sessions Judge, Coimbatore, is hereby confirmed and the order of conviction dated 23.11.2011 made in C.C.No.219 of 2011 on the file of the Court of Judicial Magistrate/Fast Track Court at Magistrate Level II, Coimbatore, is hereby set aside. The fine amount, if any, paid by the accused is ordered to be refunded to him.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

mra

1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Judicial Magistrate/Fast Track Court (at Magistrate Level II) , Coimbatore.
3. The Judicial Magistrate No.7 Coimbatore.
4. The Public Prosecutor, High Court, Chennai.

2. The Judicial Magistrate/Fast Track Court
(at Magistrate Level II) , Coimbatore.

3. The Judicial Magistrate No.7
Coimbatore.

4. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.B.Saravanakumar, Advocate, S.R.No. 87011

+1cc to Mr.Ns.Sivakumar, Advocate, S.R.No. 86710

Cr1.A.No.95 of 2013

VG II (CO)
GN (29/11/2019)



WEB COPY