

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Cr1.A.No.735 of 2018

K.Shankar

... appellant

Vs

R.Kanimozhi

... Respondent

Criminal Appeal Case filed under Section 378(4) of Cr.P.C, against the judgment passed by the learned Additional District and Sessions Judge, Dharmapuri in C.A.No.8 of 2017 dated 16.02.2018 and to set aside the judgment passed by the learned Judicial Magistrate, Fast Track Court, Dharmapuri in C.C.No.11 of 2016 dated 20.01.2017.

For appellant : Mr.V.Rajmohan

For Respondent : Mr.T.Dhanasekaran

JUDGMENT

This appeal has been filed by the complainant in C.C.No.11 of 2016 against the judgment passed by the learned Additional District and Sessions Judge, Dharmapuri in C.A.No.8 of 2017 dated 16.02.2018 and to set aside the judgment passed by the learned Judicial Magistrate, Fast Track Court, Dharmapuri in C.C.No.11 of 2016 dated 20.01.2017.

2. The appellant is the complainant and the respondent is the accused. The case of the appellant is that the respondent had borrowed a sum of Rs.6,70,000/- from the appellant for her business development and promised to repay the said amount within a months and the respondent issued a post dated cheque bearing No.582213 drawn on Indian Bank, Krishnagiri. The appellant has deposited the cheque in the Bank for encashment and the same was returned with an endorsement as ''funds insufficient'' and the same was intimated by the bank by way of memo. Due to return of the cheque, the appellant had issued statutory notice on 02.06.2015 calling upon the respondent to pay the cheque amount of Rs.6,70,000/-. Though the respondent has received the legal notice on 04.06.2015, the respondent has neither repay the amount within stipulated period of 15 days nor

sent any reply. Subsequently, the appellant has filed a private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate (Fast Track Court) Dharmapuri, for offence under Section 138 of Negotiable Instruments Act. After completing the evidence of the appellant, incriminating materials were put before the respondent, who denied as false evidence, but on the side of the defence, the respondent/accused herself examined as D.W.1. and no documentary evidence was produced.

3. After completing the trial, the trial Court found the respondent guilty for the offence under Section 138 of Negotiable Instrument Act and convicted and sentenced her to undergo Simple Imprisonment for one year and to pay a fine of Rs.5,000/- in default, to undergo further period of three months imprisonment.

4. Feeling aggrieved with the judgment of conviction and sentence passed by the learned Judicial Magistrate, Dharmapuri, the respondent herein had preferred the criminal appeal before the learned Principal District and Sessions Judge, Dharmapuri and the same was taken up on file in C.A.No.8 of 2017 and made over to Additional Sessions Judge, Dharmapuri. The appellate Court, after hearing arguments, reversed the judgment and set aside the judgment passed by the learned Judicial Magistrate and acquitted the respondent. As against the judgment of the learned Additional District and Sessions Judge, Dharmapuri in C.A.No.8 of 2017 dated 16.02.2018, the original complainant has preferred this appeal case before this Court.

5. The learned counsel for the appellant would submit that the respondent borrowed money from the appellant. Only she borrowed money as individual capacity and not borrowed for partnership firm as a partner. Even the respondent has not sent reply. Once signature is admitted there is statutory presumption that the cheque was issued to discharge legally enforceable debt. It is for the accused to rebut the statutory presumption. The respondent has denied the borrowing of the money. The appellant was running the chit, for which the husband of the respondent issued cheque for the purpose of security, that cheque was subsequently misused by the appellant. Therefore, the learned counsel for the appellant prays this Court to dismiss the appeal.

6. Heard the learned counsel for the appellant and perused the materials available on record.

7. On a perusal of the cheque, it was issued to the respondent in the name of the partnership firm. It is for the appellant has to prove as to whether the appellant lent the money to partnership firm or individual of the respondent and if suppose he lent the money to the respondent as individual

capacity, how he got the cheque from the partnership firm. The respondent need not rebut the presumption by direct evidence he can very well rebut the presumption by preponderance of possibility or probable defence even otherwise through cross examination of the witnesses. In this case, this Court finds that the appellant has not proved as projected by him in the complaint. It is for the appellant to prove the initial burden of proof. If once the initial burden is proved, then the presumption under Section 139 of Negotiable Instruments Act comes into play but not otherwise. The presumption under section 139 of NI Act, cannot be invoked in this case. Because, the cheque was not issued by the appellant. The cheque was issued only in the name of the partnership firm. Since the partnership firm was not impleaded in this case and the appellant has not explained either in the complaint or in the evidence as to why the appellant obtained the cheque from the respondent in the name of the partnership firm. The appellate Court being final Court for fact finding, had rightly re-appreciated the entire evidence placed before it and found that the appellant has not proved his case beyond reasonable doubt. If two views are possible then the benefit of doubt has to be extended to the accused and the revision Court, while exercising revisionary power, cannot re-appreciated the entire evidence and while exercising the revisionary jurisdiction, this Court has to see as to whether there is any perversity in appreciating the evidence while deciding the case.

8. On reading of the entire evidence, this Court does not find any perversity in the judgment passed by the learned First Appellate Court and this Court finds that the appellant has not proved his case beyond reasonable doubt. Therefore, there is no perversity in the judgment passed by the learned Additional District and Sessions Judge, Dharmapuri in C.A.No.8 of 2017 dated 16.02.2018. Hence, this Court does not find any illegality or infirmity in the judgment made by the appellate Court. The respondent has rebutted the presumption by preponderance of probabilities.

9. In the result, the Criminal Appeal is dismissed and judgment dated 16.02.2018 made by the lower appellate Court is hereby confirmed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

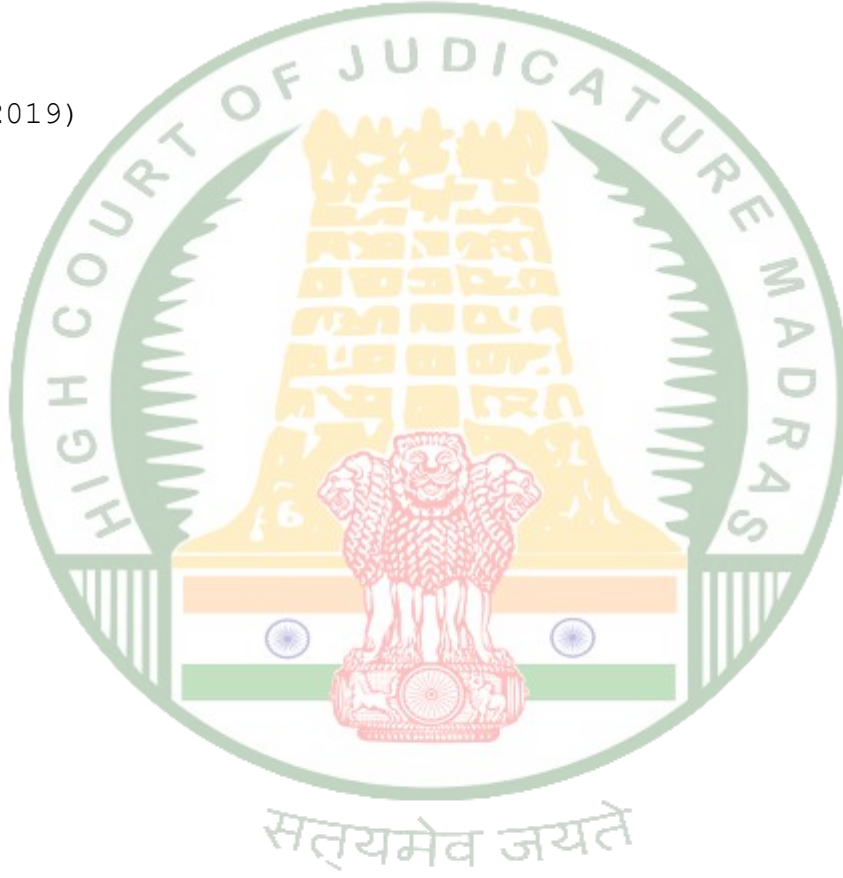
1. The Additional District and Sessions Judge,
Dharmapuri.

2. The Judicial Magistrate,
Fast Track Court, Dharmapuri.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No. 15852

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RR(CO)
GN(30/12/2019)



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