

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.621 of 2018

Suresh Kumar

... appellant/Complainant

Vs

R.Jayashree

... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the Judgment dated 13.08.2018, made in Criminal Appeal No.158 of 2016 by the learned I Additional District Sessions Judge, Coimbatore reversing the conviction order passed by the learned Judicial Magistrate Level-II, Coimbatore, under Section 138 of Negotiable Instruments Act, r/w.142 of Negotiable Instrument Act in S.T.C.No.219 of 2012 (C.C.No.366 of 2009, JM-5 Coimbatore)

For Appellant : Mr.S.Venkatesh

For Respondent : Ms.N.Priyadharsini for
Mr.Sugendran

O R D E R

The appellant is the complainant and the respondent is the accused. The appellant/complainant filed a private complaint against the respondent/accused under Section 200 of Cr.P.C., for the offence under Section 138 of Negotiable Instruments Act, before the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore. The learned Magistrate taken the complaint on file and after enquiry, the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, found guilty of the respondent/accused for the offence under Section 138 of Negotiable Instruments Act, convicted him and sentenced to undergo one year simple imprisonment. As against the said order, the respondent/accused has filed an appeal before the I Additional Session Court, Coimbatore.

2 After hearing the arguments and considering the records, the learned I Additional District and Sessions Judge, Coimbatore reversed the judgment of the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, and to set aside the conviction and sentence passed by the trial Court, and allowed the appeal. As against the said judgment the complainant has preferred the present Criminal Appeal before this Court.

3 The learned counsel for the appellant would submit that the appellant/complainant is the proprietor of Kumar Industries and he is a manufacturer of Iron Grill works. The respondent/accused has borrowed a sum of Rs.10,00,000/- (Rupees Ten lakhs only) from the appellant/complainant on 22.08.2007 for her urgent and family expenses and on the same day, she has issued a cheque for Rs.10,00,000/- bearing No.152752 on 22.08.2007, drawn on UTI Bank Ltd., Pappanackenpalayam Branch to discharge the amount. The said cheque was presented before the bank on 13.12.2007 the same was returned for "want of sufficient funds" and for which he received the memo from the bank on 14.12.2007. After receipt of the memo, he issued a statutory notice to the respondent through his advocate on 11.01.2008 and the said notice was acknowledged by the respondent/accused on 16.01.2008, he sent a reply on 28.01.2008 with the false allegations and false averment. Since, the respondent/accused has not paid the amount demanded in the statutory notice. In order to prove the case of the complainant before the learned Magistrate, the complainant himself was examined as P.W.1, on his side two witnesses were examined and eight documents were marked as Ex.P1 to Ex.P8. On the side of the defence, there are two witnesses were examined and no document was marked. The complainant has proved his case beyond reasonable doubt. The learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, found that the respondent/accused guilty for the offence under Section 138 of Negotiable Instruments Act and convicted him. The main defence of the respondent is that he has not borrowed any money from the appellant and issued the disputed cheque in favour of the appellant and the respondent does not know how the possession of the cheque came to the complainant. But she has not stated in the reply that to whom she has given the cheque. She has not given any particulars whereas during the cross examinations he has stated that the cheque was given to Anubhav Ravi. The said Anubhav Ravi has not returned the cheque and he misused the cheque. The respondent has not produced any document to show that the cheque was given to only Anubhav Ravi. The the appellant/complainant proved his case and the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, has also accepted his case and convicted the respondent/accused. The learned I Additional District Sessions Judge, Coimbatore, failed to consider the

statutory presumption under Section 139 of Negotiable Instruments Act and reversed the Judgment of the trial Court and set aside the conviction and sentence, imposed by the Magistrate which warrants interference.

4 The learned counsel for the respondent would submit that the appellant/complainant has not proved that the means to lend such a huge amount of Rs.10,00,000/- in a single day and also he has not produced any documents of statement of account or any other documentary proof to show that he has lent such a huge amount on the date of lending. Therefore, it is for the complainant has to prove that he has deposited in his bank account such huge amount and also he has source to lend money. But, he has not proved his case beyond reasonable doubt. Further, the respondent would submit that he gave a cheque only to the Anubav Ravi. The said Anubav Ravi has not returned the cheque and also they stated that the cheque was only issued in the name of the chit funds. The appellant has not shown the transaction either in the statement of account or in the income tax return. Therefore, the learned Sessions Judge has rightly re-appreciated the evidence and acquitted the respondent. Hence, there is no need for interference.

5 Heard the submissions made by the learned counsel for the appellant as well as the respondent and perused the materials available on record.

6 It is the case of the appellant/complainant is that P.W.1 produced all the documents to make out the case under Section 138 of Negotiable Instruments Act, and the respondent/accused has committed the offence. Whereas the respondent/accused has not denied the signature found in the cheque. The only defence which was taken by the respondent that the cheque was given to one Anubav Ravi. The respondent does not know, how the present complainant was in possession of the said cheque. But admittedly, she has not filed any document to show that the cheque was issued to the said Anubav Ravi. The complainant filed a complaint and also produced the cheque and the respondent/accused has not denied the signature and there is a statutory presumption that the cheque was issued to discharge the legally enforceable debt. There is no doubt that the statutory presumption is a rebuttable presumption. It is for the accused to rebut the presumption. Though, the respondent/accused made an attempt to rebut the presumption, unfortunately in order to prove his defence she has not produced any documents and also she has not denied the signature in EX.P2 confirmation deed and the respondent has not disputed the signature found in the cheque. Therefore, the learned Magistrate has rightly drawn the statutory presumption and found the guilt of the accused for the offence under Section 138 of Negotiable Instruments Act.

There is no doubt that the appellate Court is a final Court of fact finding and can re-appreciate the entire evidence and can give a independent findings. Whereas in this case, unfortunately the appellate has not properly appreciated the evidence on record. Once the cheque is in the possession of the complainant when the complainant has filed a complaint and produced the cheque itself and accused has not disputed the signature, it is for the respondent/accused has to rebut the presumption.

7 This Court is of the view that the respondent has to rebut the presumption in the manner known to law. Even though, the accused need not get into the witness box and rebut the presumption. she can very well rebut the statutory presumption in the manner known to law either through direct evidence or preponderance of probabilities even otherwise during the cross examination of the witnesses. In this case, the respondent/accused attempted to rebut the presumption but he has failed to rebut the presumption in the manner known to law. Mere bald denial is not sufficient to rebut the statutory presumption, it has to be substantiate with sufficient materials. Therefore, under these circumstances, this Court reversed the judgment of the of the Sessions Court and the same is liable to be set aside and are sufficient ground and reason to interfere with the judgment of the Sessions Court. Hence, this Court set aside the judgment passed by the learned I Additional District and Sessions Judge, Coimbatore, in C.A.No.158 of 2016 and restore the judgment of the learned Judicial Magistrate Level-II, Coimbatore, in S.T.C.No.366 of 2009.

8 Accordingly, this Criminal Appeal is allowed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sbn

To

1. The I Additional District Sessions Judge,
Coimbatore.

2. The Judicial Magistrate Level-II,
Coimbatore.

+1 cc to Mr.S.venkatesh, Advocate, Sr.No. 26077

CrI.A.No.621 of 2018

CSL/09.05.2019