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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.722 of 2018

and

Crl.M.P.No.15295 of 2018

R.Gurusamy

... Appellant

Vs

R.Govindasamy

... Respondent

PRAYER: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, against the judgment dated 28.08.2018 made in C.A.No.59 of 2018 passed by the learned II Additional District Sessions Judge, Erode by convicting and sentencing the appellant herein to undergo 6 months Simple Imprisonment and to pay Rs.15,00,000/-within 2 months from the date of judgment as compensation under Section 357(3) of Cr.P.C., in default to undergo 1 month Simple Imprisonment for the offence punishable under Section 138 of Negotiable Instrument Act by reversing the finding of acquittal of appellant made in S.T.C.No.54 of 2016 by the judgment dated 07.02.2018 passed by the learned Judicial Magistrate Fast Track Court No-II, Erode.

For Petitioner : Mr.S.Ashokkumar
Senior counsel, for
Mr.P.Palaninathan

For Respondent : Mr.N Manokaran

O R D E R

The accused is the appellant and the complainant is the respondent. The respondent/complainant has filed a private complaint 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-II, Erode in S.T.C.NO.54 of 2016.

2 The case of the respondent/complainant before the Magistrate is that, on 09.06.2015 the appellant/accused borrowed a sum of Rs.15,00,000/- from the respondent herein. For discharging the said amount, he issued a cheque bearing No.513602 dated 09.07.2015. When the cheque was presented in the Karur Vysya Bank, Erode Branch on 09.07.2015, the said cheque was returned as "want of sufficient funds". The bank also intimated the same through memo dated 10.07.2015 to the respondent/complainant. Therefore the respondent/complainant



issued a statutory notice under Section 138 of Negotiable Instruments Act on 13.07.2015 to the appellant/accused. The said notice was received by the petitioner/accused on 15.07.2015 and sent a reply on 17.07.2015. Thereafter, the respondent/complainant filed a private complaint before the learned Judicial Magistrate, Fast Track Court-II, Erode, the learned Magistrate taken cognizance of the complaint after completing legal formalities, after trial the learned Magistrate came to the conclusion that the respondent/complainant has not proved his case beyond reasonable doubt. Therefore, the learned Judicial Magistrate, Fast Track Court-II, Erode, dismissed the complaint and acquitted the appellant/accused. Challenging the said judgment of the learned Magistrate, Fast Track Court-II, Erode, in S.T.C.No.54 of 2016, the respondent/complainant had filed an appeal before the learned Principal District and Sessions Judge, Erode, in CrI.A.No.59 of 2018. After hearing the arguments advanced on either side, the learned II Additional District Judge, Erode, reversed the judgment of the learned Magistrate, Fast Track Court-II, Erode, and allowed the appeal by setting aside the judgment made in S.T.C.No.54 of 2016, and convicted the appellant/accused for the offence under Section 138 of Negotiable Instrument Act, and imposed the sentence to undergo 6 months Simple Imprisonment and also directed to pay compensation of Rs.15,00,000/- in default to undergo one month Simple Imprisonment. As against the said judgment of the appellate Court, the appellant/accused has filed a present appeal before this Court.

3 The learned counsel for the appellant would submit that the respondent/complainant has not proved his initial burden beyond reasonable doubt at the relevant point of time the respondent has no need to borrow such a huge amount. Even after the receipt of the statutory notice on 15.07.2015, he sent a reply on 17.07.2015, in which, the appellant had clearly denied the borrowal of the said amount. He had a chit transaction with the complainant/respondent. At that time he issued a cheque for repayment of subscription in the year of 2012. The respondent/complainant has not returned the cheque and subsequently, he had misused the cheque.

4 In support of his contention, the learned counsel for the respondent relied upon the following judgments of the Hon'ble Supreme Court:

1. T.P.Murugan (Dead) through legal representatives Vs. Bojan (2018) 8 SCC 469;
2. Bharat Barrel & Drum Manufacturing Company Vs. Amin Chand Payrelal (1999) 3 SCC 35.

Both the Court below failed to consider the legal proposition and dismissed the appeal by convicting the accused which warrants interference of this Court.



5 Per contra, the learned counsel for the respondent would submit that, complaint was filed and proved that the cheque was issued by the appellant/accused, when the cheque was presented before the bank and the same was returned for want of sufficient funds and also he issued a statutory notice within a stipulated time. The respondent received statutory notice and has not repaid the amount. Moreover, he came to the witness box and examined himself as P.W.1. The appellant executed the cheque for discharging the legally enforceable debt. Therefore, the Court can draw the statutory presumption that the cheque was issued only for discharging legally enforceable debt. In support of his contention, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case Kishan Rao Vs. Shankara gouda reported in (2018) 8 SCC 165; there is no need to interfere with the order passed by the Courts below.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 On reading of the entire materials and also the judgment of both the Courts below as contended by the learned counsel for the respondent/complainant, the respondent has examined as P.W.1 and also marked the cheque, intimation memo and statutory notice, and proved his initial burden. Therefore, the respondent has proved that the appellant/accused has not denied the signature found in the Ex.P1 cheque, the statutory presumption that the cheque was issued by the appellant/accused only to discharge the legally enforceable debt. Though, the appellant/accused raised his defence in the reply notice dated 17.07.2015 itself, the cheque was issued only for the security purpose in order to discharge the amount legally in the subscription of chit transaction. No doubt the accused need not get into the witness box and proved his case by letting direct evidence, the accused can always rebut the presumption or prove his defence by preponderance of probabilities. But in this case, the appellant/accused even in the cross examination admitted that, he knows the respondent/complainant for more than 40 years and he is in service and retired in the year of 2015, he is retired pensioner. The only defence taken by the respondent is that he had issued the cheque for security purpose for the payment of subscription amount. The appellant failed to prove his case that the appellant/accused had a chit transaction with the respondent/complainant.

8 In this case, the signature found in the cheque was admitted. The defence taken by the appellant is that he had issued the cheque only for chit transaction, for which he has not produced any materials. He has not rebutted the presumption



in the manner known to law.

9 The appellate Court has drawn the statutory presumption that that appellant/accused has issued the cheque to discharge legally enforceable debt. The appellant has to rebut the presumption in the manner known to law.

10 On reading of the entire materials, the complainant has stated that he has got a sufficient source to lend such huge money and also the signature of the appellant is admitted. It is for the respondent to rebut the presumption in the manner known to law. Under these circumstance, the citations referred by the learned counsel for the appellant is not applicable to the present case on hands. The citations referred by the learned counsel for the respondent is applicable for the present case.

11 Thus, the submissions made by the appellant is rejected, and there is no perversity in the judgment passed by the appellate Court. Accordingly, the judgment passed by the learned II Additional District Judge, Erode, in Crl.A.No.59 of 2018 is hereby confirmed.

12 Accordingly the present Criminal Appeal is dismissed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (J)

/true copy/
Sub Asst. Registrar

sbn

To

1.The II Additional District Sessions Judge,
Erode.

2.The Judicial Magistrate,
Fast Track Court No-II,
Erode.

copy to
The Section Officer
Crl Section High Court, Madras



+1 cc to Mr.N.Manokaran Advocate sr24362
+1 cc to Mr.P.Palaninathan Advocate sr24064

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