BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.A(MD)No.209 of 2009

M.Selvajothi ...Petitioner/Respondent/Complainant

Vs.

R.S.Nagarajan ... Respondent/Appellant/Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the order passed in C.A.No.18 of 2007 dated 21.04.2008 by the learned Principal District and Sessions Judge, Pudukottai District to confirm the conviction and sentence passed by the learned Principal District Munsif, Pudukottai in S.T.C.No.42 of 2006, dated 15.11.2007.

For Appellant : Mr.Gangaiamaran
for M/s.G.Thalaimutharasu
For Respondent : Mr.S.Saravanakumar
for M/s.R.Suriyanarayanan

JUDGMENT

This appeal has been filed by the complainant in S.T.C.No.42 of 2006 on the file of the Principal District Munsif, Pudukottai as against the order of acquittal passed by the Appellate Court in favour of the respondent/Accused in C.A.No.18 of 2007 by the Principal District and Sessions Judge, Pudukottai District.

2.The appellant/complainant has filed a complaint against the respondent/Accused and another for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

3.The Principal District Munsif, Pudukottai, by his order dated 15.11.2007, in S.T.C.No.42 of 2006, found the respondent guilty for the offence under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo three years rigorous imprisonment with a direction to pay a sum of Rs.5,00,000/- to the appellant/complainant as compensation under Section 357 Cr.P.C. As against that order, the respondent/Accused preferred an appeal before the Principal District and Sessions Judge, Pudukottai District in C.A.No.18 of 2007 and the same was allowed on 21.04.2008. As against the order of acquittal, the appellant / complainant has preferred this appeal.

4.Heard Mr.Gangaiamaran, learned counsel appearing for the appellant and Mr.S.Saravanakumar, learned counsel appearing for the respondent.

5.The learned counsel appearing for the appellant / complainant would submit that the accused has not disputed the cheque as well as his signature in the cheque / Ex.P.1 and the complainant has also established the liability for issuing the cheque before the Trial Court. When the Trial Court has rightly found him guilty and convicted, the appellate Court has mechanically reversed the order that the liability has not been established by the complainant. When the signature is admitted, it is the duty of the accused to rebut the presumption under the Negotiable Instruments Act and in this case without adverting to it, the Appellate Court has acquitted the respondent/Accused. If it is the case that the cheque was misused by any person/respondent, the complainant ought to have lodged a complaint but no such complaint was lodged.

6.The learned counsel appearing for the respondent/Accused submitted that the case of the complainant is that he gave a sum of Rs.5,00,000/- to the accused on 07.07.2004, but the appellant/complainant was not having any means to lend the money as alleged. In fact for non-payment of Rs.40,000/- the complainant was facing a proceedings under Section 138 of Negotiable Instruments Act before another Court and he was also found guilty and convicted for the offence. While so, the case of the complainant / appellant that he gave a sum of Rs.5,00,000/- to the respondent / Accused during the relevant period by borrowing money from other persons and by pledging his jewels is not acceptable and therefore, the lower Appellate Court has rightly acquitted the accused from the offence under Section 138 of Negotiable Instrument Act.

7.The learned counsel appearing for the appellant has relied the following judgments in support of his contention.

> "(i)***C.Keshavamurthy Vs. H.K.Abdul Zabbar 2013-2-L.W.(Crl.)414.***
> (ii)***Rangappa Vs. Sri Mohan 2010(4) CTC 118.***
> (iii)***S.Ponnusamy Vs. K.Mani 2015(3) CTC 418.***"

8.This Court paid its anxious consideration to the rival submissions made and also perused the available records.

9.The case of the complainant is that he lend a sum of Rs.5,00,000/- to the accused on 07.07.2004 and in discharge of that liability, the accused gave the cheque in question and when it was presented it was returned for insufficient funds and the accused failed to pay the cheque amount even after the statutory period on receipt of notice hence he committed the offence. But during the cross examination, the complainant has admitted in his evidence that during the relevant period, he was not having sufficient money and arranged the money by borrowing it from various persons and by pledging his jewels.

10.According to the complainant, he borrowed a sum of Rs.1,50,000/- from one Annamalai Chettiyar, a sum of Rs.50,000/-from one Muthu Palaniappan and a sum of Rs.1,00,000/- from a chit and another sum of Rs.1,00,000/- from his sister's husband one Jeevanantham and arranged the balance amount of Rs.1,00,000/- by pledging his jewels, but there are no records to that effect. The complainant further admits in his cross examination that he issued a cheque for a sum of Rs.40,000/- during the relevant period and for the non payment of that Rs.40,000/- was facing a complaint under Section 138 of the Negotiable Instruments Act. Considering this evidence, the lower Appellate Court held that the complainant was not having sufficient money to lend a sum of Rs.5,00,000/- to the accused as alleged, allowed the appeal and acquitted the accused.

11.To constitute an offence under Section 138 of the Negotiable Instruments Act, there must be a legally enforceable debt and in discharge of that debt if any cheque was issued and not honoured, the complainant is expected to inform the same to the accused and shall give 15 days time for honouring the cheque and even after the receipt of notice if the accused failed to pay the cheque amount then the offence is said to have been committed by the accused.

12.One of the main ingredient for the offence is there must be a legally enforceable debt. The accused in this case has rebutted the presumption by establishing during the trial that the complainant was not in a position to repay his debt of Rs.40,000/- to another person and was facing a similar 138 proceedings during the relevant period. The complainant admit that he was not having money and arranged the same by borrowing it from various person. Considering this evidence of the complainant, the lower appellate Court rightly acquitted the accused.

13.This is an appeal as against the order of acquittal. The Hon'ble Apex Court laid down certain principles to be followed in deciding an appeal against an order of acquittal. When there are two views are available then the view in favour of the accused has to be considered. Since the appellant / complainant has not established his case of legally enforceable debt in this case, the benefit of doubt can be extended to the accused and therefore, this Court is not inclined to interfere with the orders of the Principal District and Sessions Judge, Pudukottai in C.A.No.18 of 2007 dated 21.04.2008 and accordingly, the appeal is dismissed.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)

vsg

To

1.The learned Principal District
and Sessions Judge,
Pudukottai District.

2.The learned Principal District Munsif,
Pudukottai.

3.The Section Officer,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.R.SURIANARAYANAN, Advocate (SR-90336[F] dated 30/09/2019)

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NA(CO)
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