



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.10.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.A(MD)No.246 of 2009

Jeyakumar Pandian

.. Appellant/Respondent/Complainant

Vs.

Rasu

.. Respondent/Appellant/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code as against the judgment of acquittal passed by the learned Additional Sessions Judge, Fast Track Court No.2, Tirunelveli, in Cr1.A.No.53 of 2007, dated 27.07.2007.

For Appellant : Mr.N.Mohideen Basha

For Respondent : Mr.K.Elangovan

JUDGMENT

This Criminal Appeal is preferred by the complainant as against the order passed by the learned Additional Sessions Judge, Fast Track Court No.2, Tirunelveli, in Cr1.A.No.53 of 2007, dated 27.07.2007, in and by which, the learned Sessions Judge, has reversed the conviction and sentence and thereby, acquitted the respondent / complainant, in a proceedings initiated under Section 138 of the Negotiable Instruments Act.

2. According to the appellant / complainant, the respondent / accused become a friend through a relative and in the month of February, 2004, the complainant gave the accused a sum of Rs.3,00,000/- as a hand loan, in the presence of one Poes Kumar. In order to discharge the said liability, the accused issued six cheque leaves, each for Rs.50,000/-, of which, four cheques, when presented for collection, got dishonoured as 'Insufficient Funds'. Therefore, the complainant, after issuing a notice calling upon the accused to make the payment as required under Clause (b) of the proviso to Section 138 of the Negotiable Instruments Act, filed this complaint, after the statutory period.

3. The learned trial Judge, namely, the learned Judicial Magistrate, Shencottai, after full fledged trial, has found the respondent / accused guilty under Section 138 of the Negotiable Instruments Act in C.C.No.28 of 2005 and by order dated 07.02.2007, convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/-, i/d to undergo simple imprisonment for one month and to pay a compensation of Rs.10,000/- to the complainant. However, on appeal, the learned first appellate



Judge has reversed the conviction and acquitted the respondent / accused. Aggrieved, the appellant has filed the instant appeal.

4. Heard Mr.N.Mohideen Basha, learned Counsel appearing for the appellant / complainant and Mr.K.Elangovan, learned Counsel appearing for the respondent / accused.

5. The learned Counsel for the appellant, reiterating the facts of the case, would contend that the respondent has neither responded to the statutory notice issued by him nor paid the amount. He would further contend that the respondent has not denied that the cheques belong to him or the signature found in the cheques. Though the said Poes Kumar is a relative of the appellant, on whose presence the transaction took place, he could not be traced in spite of the best efforts. But, it cannot be a ground to disbelieve his case and therefore, the learned Counsel prays for interference.

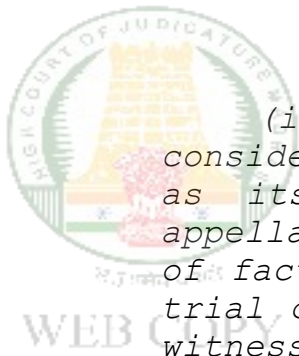
6. Per contra, the learned Counsel appearing for the respondent would submit that though the cheques belong to the respondent, it was given to some other person, by name, Perumal, in connection with a money transaction and as there was a dispute in the payment of interest, the respondent gave the cheques and it was misused by this appellant. In fact, the learned Counsel would contend that they did not know the appellant and has not obtained any loan from him. The learned Counsel also relied upon the cross examination, wherein, it is elicited that the complainant is not able to answer as to what was the salary of the accused and what is the father's name of the accused, etc. He would further contend that the complainant is not a man of means to lend a sum of Rs. 3,00,000/- and the appellate Court, after considering all these aspects, has rightly acquitted the respondent and the learned Counsel prays for dismissal.

7. Heard the learned Counsel appearing on either side and perused the documents placed on record.

8. Before dwelling into the merits of the case, since the appeal is filed as against an order of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V.Sejappa v. State [(2016) 12 SCC 150]**, wherein, the Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;



(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

9. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be



innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

10. It is the specific case of the defence that the complainant is not a man of means to lend a sum of Rs.3,00,000/-. In this regard, they have examined the Bank Manager [DW1], where the complainant hold an account and DW1 has deposed that at the relevant point of time, the complainant is having only a sum of Rs.595/- in his account. Though the complainant has taken a plea that he gave the amount, out of his savings from agricultural income as well as income through coconut grooves for lease, in the cross examination, he could not furnish any name of the land owner from whom he took the land for lease. He is not in a position to disclose the agricultural income.

11. This fact, coupled with the answer elucidated from the cross examination that the appellant is not aware of the nature of business carried out by the respondent and other details, creates serious doubt on the case of the appellant. Moreover, the relative of the appellant, namely, Poes Kumar, on whose presence the alleged transaction was made, was not examined. Under such circumstances, even assuming that the appellant is a man of means to lend such amount, it is highly doubtful as to how a person could give such a huge amount to a unknown person.

12. It is also brought to the knowledge of this Court that for the subject transaction, six cheques were alleged to be issued, of which, the present appeal pertains to four cheques. The issue as regards one another cheque was dealt with by this Court in Cr1.A.(MD)No.46 of 2009 and this Court, by order dated 20.12.2018, has confirmed the acquittal passed by the first appellate Court.

13. In view of the foregoing discussions and taking note of the fact that this appeal is filed as against an order of acquittal, this Court is not inclined to interfere with the order passed by the learned Additional Sessions Judge, Fast Track Court No.2, Tirunelveli, in Cr1.A.No.53 of 2007, dated 27.07.2007 and the same is accordingly, confirmed.

14. In fine, this criminal appeal is dismissed.

Sd/-

Assistant Registrar (CS-II)

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- 1.The Additional Sessions Judge,
Fast Track Court No.2,
Tirunelveli.
- 2.The Judicial Magistrate,
Shencottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer, Criminal Section, (2 COPIES)
Madurai Bench of Madras High Court,
Madurai.

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