



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.A(MD)No.197 of 2011

V.Santhanakrishnan ... appellant / complainant

Vs.

S.Prabakaran ... respondent/ accused

PRAYER: Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the order dated 24.02.2011 made in Criminal Appeal No.87 of 2010 on the file of the I Additional Sessions Judge (Protection of Civil Rights), Thanjavur reversing in CC.No.207 of 2010 on the file of the Judicial Magistrate No.III, Thanjavur, dated 27.08.2010 and convict the above respondent / accused.

For Appellant : Mr.K.Guhan

For Respondent : Mr.C.Susikumar,
Legal Aid Counsel

JUDGMENT

This appeal is filed by the complainant as against order dated 24.02.2011 made in Criminal Appeal No.87 of 2010 on the file of the I Additional Sessions Judge (Protection of Civil Rights), Thanjavur acquitting the respondent from the charge punishable under Section 138 of NI Act.

2.The appellant has filed a private complaint against the respondent/accused that he paid a sum of Rs.1,90,000/- on various dates to get a job for his daughter. But the accused did not get the job for his daughter. However, in discharge of that liability, he gave a cheque dated 05.01.2008. The cheque was presented before the Bank and it was returned with an endorsement as "payment stopped" and therefore, after issuing notice as required under the Negotiable Instrument Act, the present complaint has been filed.

3.The trial Court in conclusion of the trial, found the respondent guilty under Section 138 of NI Act and convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.5,000/- and in default of payment of fine amount, three months simple imprisonment was also ordered. As against the conviction and sentence imposed against the respondent, he has filed



an appeal in Criminal Appeal No.87 of 2010 before the I Additional Sessions Judge, Thanjavur and the appellate Court by order dated 24.02.2011 acquitted the accused from the charges. As against the order of acquittal, the present appeal has been filed by the complainant.

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4.Heard Mr.K.Guhan, learned Counsel for the appellant and Mr.C.Susi Kumar, learned Legal Aid Counsel for the respondent.

5.When this appeal was listed for hearing on earlier occasion, it was found that notice with regard to the respondent / accused was served and his name was also printed. However, nobody appeared on behalf of the respondent and therefore, by order dated 23.09.2019, this Court appointed Mr.C.Susi Kumar, as Legal Aid Counsel to defend this appeal on behalf of the respondent.

6.The learned Counsel for the appellant submits that the respondent/accused has not denied the fact that the cheque belongs to him and he has also not denied his signature found in the cheque Ex.P1. While so, the appellate Court has erroneously acquitted the accused based on a document, which has been created by the accused at an later point of time to make out his defence in this case. He also pointed out that the amount was paid to the accused through pay orders and cheque and therefore, the liability has been duly established in this case and the cheque was also given by the accused in discharge of the said liability and therefore, the appellate Court ought to have confirmed the conviction and the sentence imposed by the trial Court.

7.Per contra the learned Legal Aid Counsel appearing on behalf of the respondent submitted that the cheque was obtained under a compulsion of a retired Police Officer and under a threat and coercion in the Police Station and after which, the accused has lodged a complaint before the same Inspector of Police and to all the higher officials on the same day that the cheque was obtained under coercion. Apart from the complaint, he also made a paper publication in this regard in a news paper and those documents have been marked as Ex.D1 to Ex.D3., which clearly establish that the cheque has been obtained by the appellant under threat.

8.Apart from that he also pointed out that Rs.1,90,000/- said to be paid by the complainant is towards obtaining a job for his daughter. According to the respondent, he was not holding any position to provide a job to the appellant's daughter. Moreover, the statutory notice as required under Section 138(B) of NI Act has not been effected in this case.

9.This Court has paid its best attention to the rival submission and considered the materials placed on record.



10. Admittedly, the respondent said to have borrowed a sum of Rs.1,90,000/- and paid the same through pay orders and the cheque has been paid for securing job for his daughter. Parting with the money to a third person, who is not holding any position to provide a job, cannot be treated as legally enforceable debt and therefore, in this case, even any cheque has been issued, in discharge of liability, it cannot be stated as legally enforceable debt. Apart from the same, the accused in this case has lodged a complaint to the higher officials that the accused was taken to the Police Station and under threat and coercion the cheque in question Ex.P1 was obtained and it is relevant to point out that the appellant / complainant is a retired Police Officer. Soon after coming out of the Police Station the accused has also lodged the complaint to the higher officials and also made a paper publication and those documents have also been marked as Ex.D1 to Ex.D7. In this case, the statutory notice has not been effected. Clause (b) of the proviso to Section 138 of the NI Act mandates the notice has to be issued on the return of the cheque. In this case cheque has been returned on for the reason payment has been stopped on the instructions of the accused. Statutory notice issued as contemplated under Section 138 (B) of the NI Act, has been returned with an endorsement that no such addressee. If it is apparent that the postal cover has been returned as no such addressee, it cannot be treated that the notice has been served.

11. 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."

12. 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:

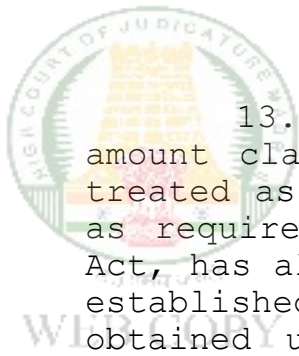
"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(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."



13.Considering the facts and circumstances of the case, the amount claimed by the complainant is for getting a job cannot be treated as legally enforceable debt and that apart statutory notice as required under Clause (b) of the proviso to Section 138 of NI Act, has also not been complied with. Moreover, the accused has also established by way of ExD1 to ExD7 that the cheque in ExP1 was obtained under a threat and coercion in the Police Station and complaint has also been made in this regard to the higher officials, but there was no action taken by the higher officials and that apart paper publication was also given and there is no response by the complainant in this regard and Section 138(B) was also not complied with, this court is not inclined to interfere with the order of the trial Court.

14.In view of the discussion held above, this criminal appeal is liable to be dismissed and accordingly, this criminal appeal is dismissed and the order dated 24.02.2011 made in criminal appeal No.87 of 2010 by Additional Sessions Judge (Protection of Civil Rights), Thanjavur is confirmed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

Dsk

To

1.I Additional Sessions Judge,
(Protection of Civil Rights),
Thanjavur.

2. The Judicial Magistrate No.III,
Thanjavur.

+1 CC to Mr.K. GUHAN, Advocate (SR-91091[F] dated 03/10/2019)

+1 CC to Mr.C.SUSIKUMAR, Advocate (SR-91663[F] dated 09/10/2019)

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