



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A (MD) No.395 of 2013

Krishna Pillai

.. Appellant/1st Respondent/Complainant

Vs.

1.Rajeswari

... 1st Respondent/Appellant/Accused

2.The State of Tamil Nadu,
Rep. by Public Prosecutor,
Nagercoil

.. 2nd Respondent/Respondent

PRAYER : Criminal Appeal is filed under Section 378 of Criminal Procedure Code, to set aside the judgment passed in C.A.No.163 of 2006, dated 08.01.2013 on the file of the District Judge, Kanyakumari and restore the judgment passed in C.C.No.5 of 2003, dated 03.08.2006 by the learned Judicial Magistrate, Boothapandi and consequently, punish the accused.

For Appellant : Mr.N.Mohideen Basha

For R1 : Mr.S.Dheena Dayalan

For R2 : Mrs.S.Bharathi,
Government Advocate.(Crl.Side)

JUDGMENT

This Criminal Appeal is filed as against the order passed by the District Court, Kanyakumari District at Nagercoil in C.A.No.163 of 2006.

2.The appellant is the complainant in C.C.No.5 of 2003, on the file of the learned Judicial Magistrate, Boothapandi, wherein he filed a complaint as against the respondent/accused for the offence under Section 138 and 142 of Negotiable Instrument Act.

3.The case of the appellant/complainant is that the accused and her husband, namely, Murugesan are closely acquainted with him. On 20.05.2002, the accused borrowed a sum of Rs.2,85,000/- from the complainant with an undertaking to return the amount within a month and in discharge of the said liability, had also issued a post dated cheque bearing No.363780, dated 26.06.2002 of the Canara Bank, Vadasery for a sum of Rs.2,85,000/-. Even at the time of issuing the cheque, the accused requested to grant three months time for returning the amount and to present the cheque for collection. When the complainant presented the cheque through his bank on 18.09.2002,



the said cheque was returned with an endorsement as 'funds insufficient' on 22.10.2002. The complainant, thereafter, issued a statutory notice as required under Section 138 (b) of Negotiable Instrument Act and filed the complaint before the learned Judicial Magistrate, Boothapandi.

WEB COPY

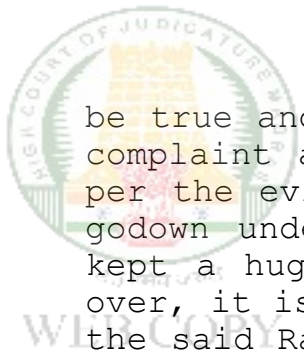
4. The learned Judicial Magistrate, Boothapandi, by an order dated 03.08.2006, found the accused guilty for the offence under Section 138 of Negotiable Instrument Act, convicted and sentenced him to undergo one year simple imprisonment with fine of Rs.5,000/-, in default of fine amount, three months simple imprisonment was also ordered. As against the order of conviction, the respondent/accused preferred an appeal in C.A.No.163 of 2006, before the Principal Sessions Court, Kanyakumari at Nagercoil and the same was allowed in favour of the accused by order dated 08.01.2013. Aggrieved over the same, the complainant has filed this appeal.

5. Heard Mr.N.Mohideen Basha, learned counsel for the appellant and the Mr.S.Dheena Dayalan, learned counsel for the first respondent.

6. Mr.N.Mohideen Basha, learned counsel for the appellant has submitted that the trial court, after analyzing all the evidences, has rightly convicted the accused. But the appellate Court, without any discussion, has reversed the same, which requires interference. According to him, the complainant has established his case by producing necessary witnesses and all requisites as contemplated under Section 138 of Negotiable Instrument Act. Though the complainant has clearly established his case, the Appellate Court has erroneously acquitted the accused. It is further submitted that the accused, on receipt of the statutory notice, at the earliest point of time, has not taken any steps by way of a reply notice taking out his defence and that has not been taken into account by the appellate Court while deciding the appeal.

7. He would further contend that D.W.1 had deposed that the cheque in dispute, according to the ledger in the bank, reflects that it was issued at a later point of time, in which case, the complainant's version that the post dated cheque was issued may not be possible, for which, the complainant had suitably replied that though the cheque book was issued earlier, the entries in the bank ledger were entered at later point of time. Therefore, only on this ground alone, the entire prosecution cannot be thrown out and he prays for interference.

8. Per contra, Mr.S.Dheena Dayalan, learned counsel for the respondent/accused has submitted that the Bank Manager of Indian Overseas Bank was examined as D.W.1 and he has categorically stated that the cheque was issued on 20.05.2002. While so, the case of the complainant that the accused borrowed a sum of Rs.2,85,000/- and issued a post dated cheque on the same day on 20.05.2002 would not



be true and therefore, the appellate Court has rightly rejected the complaint and acquitted the appellant. He also pointed out that as per the evidence of P.W.1, he was working as a clerk in Indane Gas godown under one Jayaraj, for monthly salary of Rs.4,500/- and he kept a huge sum of Rs.2,85,000/- without any valid document. More over, it is the case of the defence that there was a dispute between the said Rajeswari and her husband and the cheque has been forcibly obtained by Jayaraman with the help of the police in a police station. Therefore, he prays for dismissal.

9.This Court has paid its best attention to the rival submissions and also perused the materials placed on record.

10. 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."

11. 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."

12. The case of the complainant is that on 25.05.2002, the accused approached him and borrowed a sum of Rs.2,85,000/- and in discharge of said liability issued the cheque. But D.W.1/Bank Manager of Canara Bank has clearly stated before the Court that the related cheque book was issued only on 30.05.2002. That apart as rightly pointed out by the learned counsel for the appellant that the complainant is also working under one Jayaraj, for monthly salary of Rs.4,500/- and a sum of Rs.2,85,000/- is given as loan amount to the accused with whom his owner Jayaraj was having some



13.The learned counsel for the appellant has also relied upon the decision of the Honourable Supreme Court of India in the case of **Basalingappa Vs. Mudibasappa** reported in **2019 (2) T.N.L.R. 1(SC)**, wherein the Honourable Supreme Court has held as follows:

"14.This Court held that what is needed is to raise a probable defence, for which it is not necessary for the accused to disprove the existence of consideration by way of direct evidence and even the evidence adduced on behalf of the complainant can be relied upon. Dealing with standard of proof, following was observed in paragraph No.32:

"32.The standard of proof evidently is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from the materials on record but also by reference to the circumstances upon which he relies."

15.In *Krishna Janardhan Bhat V. Dattatrya G.Hegde*, (2008) 4 SCC 54, this Court held that an accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. Following was laid down in Paragraph No.32.

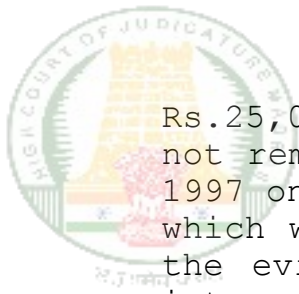
"32.An accused for discharging the burden of proof placed upon him under a statute need not examine himself. He may discharge his burden on the basis of the materials already brought on record. An accused has a constitutional right to maintain silence. Standard of proof on the part of an accused and that of the prosecution in a criminal case is different."

16.This Court again reiterated that whereas prosecution must prove that guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". In paragraph No.34, following was laid down.

"34.Furthermore, whereas prosecution must prove that guilt of an accused beyond all reasonable doubt, the standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies".

....24. Applying the proposition of law as noted above, in facts of the present case, it is clear that signature on cheque having been admitted, a presumption shall be raised under Section 139 that cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In cross-examination of the PW.1, when the specific question was put

<https://hcservices.hcjdts.gov.in/hcservices/onepage> was issued in relation to loan of



Rs.25,000/- taken by the accused, the PW1 said that he does not remember. PW1 in his evidence admitted that he retired in 1997 on which date he received monetary benefit of Rs.8 lakhs, which was encashed by the complainant. It was also brought in the evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs.4,50,000/- to Balana Gouda towards sale consideration. Payment of Rs.4,50,000/-being admitted in the year 2010 and further payment of loan of Rs.50,000/- with regard to which complaint No.119 of 2012 was filed by the complainant, copy of which complaint was also filed as Ex.D2, there was burden on the complainant to prove his financial capacity. In the year 2010-2011, as per own case of the complainant, he made payment of Rs.18 lakhs. During his cross-examination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts.

14.In view of the above, this Court is not inclined to interfere with the order passed by the appellate Court. Accordingly, this Criminal appeal is dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Das

To

1.The District Judge, Kanyakumari.

2.The Judicial Magistrate, Boothapandi.

3.The Public Prosecutor,Nagercoil.

Copy to:

1. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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

CRL.A(MD)No.395 of 2013
25.09.2019

SRK(CO)

<https://hcrvcs.courts.gov.in/0201ces6P> : 5C