IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.04.2019
Pronounced on : 13.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.101 of 2019

D.Gopala Krishnan ...Appellant/Complainant

-Vs-

R.J.Veeragavan ...Respondent/Accused

Prayer : Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the judgment dated 29.11.2018 made in C.C.No.3777 of 2016 on the file of the learned Fast Track Court Magisterial Level No.1, Egmore, Allikulam, Chennai and convict the respondent.

For Appellant : Mr.M.Ravindran
Senior Counsel for
Mr.Krishna Ravindran

For Respondent: Mr.V.K.Sathiyamoorthy
for Mr.P.Udayakumar

JUDGMENT

This criminal appeal has been directed against the judgment dated 29.11.2018 made in C.C.No.3777 of 2016 on the file of the learned Fast Track Court Magisterial Level No.1, Egmore, Allikulam, Chennai.

2.The appellant herein is the complainant filed a private complaint under Section 200 Cr.P.C against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act before the learned Metropolitan Magistrate, Fast Track Court No.I, Egmore, Chennai. After taking cognizance of the complaint in C.C.No.3777 of 2016 and completing the formalities, the learned Magistrate dismissed the complaint and acquitted the respondent. Aggrieved by the said judgment, the complainant preferred the present appeal before this Court.

3. The case of the appellant is that the appellant and the respondent jointly started a construction business in the year 1995 and the appellant has invested huge sum as principal and promoted five projects. However, the appellant had not received any money either principal or profit from the said five projects. It is further stated that the respondent had orally promised that they can enter into a partnership deed. After investments and hard work put into by the appellant, the respondent had given many reasons for postponing the execution of the partnership deed and also wantonly avoid to enter into the agreement. Hence, the appellant decided to quit from the business and worked out his share of profits as Rs.2.30 crores and requested the respondent to pay his due share. It is further stated that after some negotiations, the respondent agreed to pay a sum of Rs.75 lakhs, since the last cheque was dishonored, only Rs.50 lakhs was realized. The complainant has further stated that in part settlement of remaining balance of Rs.1.80 crores, the respondent issued 3 post dated cheques, each for a sum of Rs.25 lakhs. When the cheque bearing No.503905, dated 31.07.2007 was presented for collection, it was realized and the cheque bearing No.503904, dated 31.8.2007 was presented for collection, it was returned as 'Payment stopped by drawer' vide memo dated 01.09.2007. The complainant again deposited the same cheque for collection and again it was returned as 'Funds Insufficient' vide memo dated 06.09.2007. Hence, the appellant issued a statutory notice on 14.09.2007. The respondent received the said notice and sent a reply and the complainant also sent a rejoinder to the accused. Hence, the complainant claims that the accused has failed to repay the cheque amount, he preferred the complaint before the trial Court.

4. After taking cognizance of the offence and in order to prove the complaint, on the side of the complainant 3 witnesses P.Ws.1 to 3 were examined and 9 documents were marked. On the side of the respondent/accused, four witnesses D.Ws.1 to 4 were examined and 27 documents were marked.

5.After the trial, the learned Magistrate dismissed the complaint and acquitted the respondent on the ground that the appellant has not proved that the respondent has issued the cheques to discharge legally enforceable debts. Therefore, the complaint was dismissed.

6.The learned Senior Counsel appearing on behalf of the appellant would submit that respondent sent a letter with acknowledgment by admitting the liabilities and also admitted the signature found in the cheques. Once the accused has admitted the transaction and signature, there is a statutory presumption under Section 139 of Negotiable Instruments Act. The respondent has issued the cheques to discharge legally enforceable debts. However, the learned Magistrate failed to consider the settled proposition of law and dismissed the complaint as the appellant has not proved his claim.

7. The learned counsel for the respondent would submit that though the respondent has admitted the cheques, but the cheques were not issued for legally enforceable debts. The respondent was brought to the police station and forced to sign in the cheques and the complainant also admitted that one of the cheques was encashed for Rs.25 lakhs and he agreed to return the other two cheques, but he has not returned it. No doubt, if the signature found in the cheque is admitted, there is a presumption under Section 139 of Negotiable Instruments Act. At the same time, the said presumption is rebuttal presumption and it need not be rebutted by direct evidence, the accused can very well rebut the presumption by preponderance of probabilities or probable defence or through cross examination of the witnesses. In this case on the side of the respondent four witnesses were examined and the appellant also admitted that the cheques were obtained in the presence of police officials in the police station and also admitted that one cheque was encashed and as per the arrangements, he has not repaid the amount or return the cheques, therefore, presumption has been rebutted. The learned Magistrate found that there is no merit in the complaint and hence, dismissed the same.

8. The learned counsel for the respondent relied on the judgment of the Apex Court in Basalingappa Vs Mudibasappa [CDJ 2019 SC 471] and the judgment of this Court in R.Sarangapani Vs. R.S.Nammalwar [2017 SCC Online MAD 16220].

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

10. Admittedly, there was a business transaction between the appellant and the respondent and due to some dispute the appellant gave a complaint before police against the respondent. Pending disposal of the complaint, the complainant/appellant obtained the cheques. However, except one cheque other cheques were dishonoured, hence, the appellant sent a notice. In the said notice nothing has been stated about total liability of the respondent. It is settled proposition of law that in a complaint, it has to be specifically stated that what was the transaction between the appellant and the respondent and for what purpose the respondent has given the cheques and as to whether the cheques were given for legally enforceable debts. Once the initial burden is proved, then it is for the accused to rebut the presumption. No doubt this statutory presumption need not be rebutted by direct evidence, he can very well rebut the presumption by preponderance of probabilities or probable defence or through cross examination of the witnesses.

11.In the present case on hand, the appellant has admitted that there was a complaint before the police and also one of the cheques was presented and the complainant encashed the cheque. In this case two views are possible and the trial Court has taken one of the possible view. Normally in the appeal against acquittal, the High Court should not interfere in well reasoned judgment of the trial Court. In this case the trial Court has arrived at conclusion after proper appreciation of evidence. Further, it is settled proposition of law that in the appeal against the acquittal, the respondent/accused has double presumption, i.e., presumption of innocence further reinforced, reaffirmed and strengthened against acquitted accused by judgment in his favour. Therefore, it is for the appellant to prove whether the cheques were issued only to discharge legally enforceable debts. In this case, on reading of the entire materials the respondent admitted that he executed cheques, but, at the same time he denied the legally enforceable debts. The cheques were obtained in the police station which creates doubt. The trial Court considered the entire materials available on record and came to the conclusion that the respondent has rebutted the presumption and the appellant has not proved his case beyond reasonable doubt, though the signature of the cheques are admitted. The respondent has rebutted the presumption by preponderance of probabilities.

12.Admittedly, in this case the cheques were executed in the presence of the police officials in the police station. But, the appellant has not proved his case in the manner known to law that the respondent issued cheques only for discharging legally enforceable debts or liabilities. It is well settled proposition of law, in the appeal against acquittal, unless strong and compelling reason exist in evidence itself, the findings and conclusion reached by the trial Court will not be interfered by the High Court. If two views are reasonably possible from the evidence on record, one favouring the accused and one against the accused, the High Court is not expected to reverse the acquittal. On a perusal of entire evidence of both the parties, it reveal that there is no compelling circumstances exist to interfere with the judgment of trial Court. Therefore, this Court does not find any perversity in the judgment dated 29.11.2018 made in C.C.No.3777 of 2016 on the file of the learned Fast Track Court Magisterial Level No.1, Egmore, Allikulam, Chennai.

13. In the result, this criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CC)

//True Copy//

Sub Assistant Registrar

Ms

To

The Fast Track Court Magisterial Level No.1,
Egmore, Allikulam, Chennai .

+1cc to Mr.Krishna Ravindran, Advocate, S.R.No. 12716
+1cc to Mr.P.Udayakumar, Advocate, S.R.No. 12256

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VG II(CO)
GN(12/03/2020)