

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.821 of 2012

S.Natesan .Appellant/Respondent/Complainant

Vs.

P.Panneerselvam ..Respondent/Appellant/Accused

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 13.08.2012 passed in C.A.No.76 of 2012 on the file of the Principal District and Sessions Court, reversing the judgment and order dated 17.02.2012 passed in S.T.C.No.93 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode.

For Appellant : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.Ramprakash Rajagopal
Amicus Curiae

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 13.08.2012 passed in C.A.No.76 of 2012 on the file of the Principal District and Sessions Court, Erode, reversing the judgment and order dated 17.02.2012 passed in S.T.C.No.93 of 2011 on the file of the Judicial Magistrate Court (Fast Track Court No.II), Erode.

2. For the sake of convenience, the appellant and the respondent will be referred to as complainant and accused, respectively.

3. The long and short of the facts leading to the filing of this case are as under:

3.1 It is the case of the complainant that on 07.06.2009, the accused borrowed a sum of Rs.3,00,000/- from him and gave a cheque dated 21.07.2009 (Ex-P1) drawn on Bank of India, Erode Branch, for an even sum; the complainant presented

the said cheque (Ex-P1) and it was dishonoured on the ground "Account Closed"; therefore, the complainant issued a statutory demand notice (Ex-P4) dated 31.07.2009 to the office address and the residential address of the accused; both the notices returned unserved; hence, the complainant initiated a prosecution in S.T.C.No.93 of 2011 before the Judicial Magistrate (Fast Track Court No.II), Erode, for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused.

3.2 Before the trial Court, the complainant examined himself as PW1 and marked eight exhibits.

3.3 The accused examined one A.C.Anbu Elango, Assistant Manager, Bank of India, Erode Branch, as DW1 and Ramaswamy, a common friend of the accused, as DW2 and marked five exhibits.

3.4 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 17.02.2012 in S.T.C.No.93 of 2011, convicted the accused of the offence under Section 138 of the NI Act and sentenced him to one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment.

3.5 The accused filed an appeal in C.A.No.76 of 2012, which was heard by the Principal District and Sessions Court, Erode and eventually, allowed on 13.08.2012 and the accused was acquitted.

3.6 Challenging the judgment and order of acquittal, the complainant is before this Court.

4. Heard Mr.S.Kaithamalai Kumaran, learned counsel for the complainant. Notice has not been served on the accused. Therefore, this Court appointed Mr.Ramprakash Rajagopal, as Amicus Curiae for the accused.

5. The learned counsel for the complainant submitted that the appellate Court had failed to note that the accused had admitted his signature in the impugned cheque (Ex-P1) and therefore, the judgment and order of the trial Court ought not to have been reversed. In this regard, he placed very strong reliance on the judgment of the Supreme Court in Bir Singh vs. Mukesh Kumar¹.

¹(2019) 4 SCC 197

6. Per contra, Mr.Ramprakash Rajagopal, learned Amicus Curiae refuted the submission made by the learned counsel for the complainant.

7. This Court gave its anxious consideration to the rival submissions.

8. On a perusal of the evidence of the complainant (PW1), it is seen that he has spoken to about giving of loan of Rs.3,00,000/-, issuance of the impugned cheque (Ex-P1) by the accused, its presentation and dishonour on the ground "Account Closed", issuance of the statutory demand notice (Ex-P4) to the office and residential addresses of the accused and the return of the same unserved.

9. It is the specific defence of the accused that the complainant was running a financial establishment in the name and style of "Balabharathi Finance" and was collecting deposits from various persons; since the complainant was very close to him, he used to oblige the complainant by giving signed cheques for the purpose of discounting them with the bank and getting them back from the complainant. To prove this fact, the accused examined Anbu Elango (DW1), Assistant Manager, Bank of India, Erode and Ramaswamy (DW2). He also marked a cheque (Ex-D1) dated 25.10.2008 for Rs.50,000/- issued by his wife Neelambal in the name of the complainant and another cheque (Ex-D2) dated 22.08.2007 for Rs.22,580/- issued by him in favour of the complainant. The complainant signed on the reverse of both the cheques and he has admitted the same in the cross-examination. The complainant also admitted that he was arrested by the police for not repaying the depositors.

10. The appellate Court has commendably adopted a common sense approach in the whole issue by holding that when the earlier cheques (Exs-D1 & D2) for Rs.50,000/- and Rs.22,580/-, respectively, given by the accused were not honoured, the assertion of the complainant that he gave a huge loan of Rs.3,00,000/- subsequently on 07.06.2009 without obtaining any document like promissory note, etc., from the accused appears improbable. That apart, when the complainant himself was arrested for not repaying the depositors of Balabharathi Finance, his submission that he gave a loan of Rs.3,00,000/- to the accused defies credulity.

11. It is true that in Bir Singh (supra), the Supreme Court has held that, when the accused admits his signature in the cheque, it is not necessary for the complainant to prove the debt and the burden is on the accused to prove that there was no debt.

12. In Rangappa Vs Sri Mohan², the Supreme Court has held that the accused can discharge the burden under Section 139 of the NI Act by preponderance of probability. In this case, the accused has raised a probable defence and not a fanciful one. He has also adduced evidence in support of the defence taken by him.

13. At this juncture, it may be apposite to refer/allude to the judgment of the Supreme Court in Arulvelu and another Vs. State represented by the Public Prosecutor and another³, wherein, at paragraph no.36, it is held as follows:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two view are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial Court is either perverse or wholly unsustainable in law."

14. In such perspective of the matter, this Court does not find any infirmity in the judgment and order of the appellate Court reversing the judgment and order of the trial Court.

As a result, this criminal appeal is dismissed as being devoid of merits.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

nsd

2 (2010) 11 SCC 441
3 (2009) 10 SCC 206

To

1. The Principal District and
Sessions Judge,
Erode.

2. The Judicial Magistrate,
(Fast Track Court No.II),
Erode.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return
the original records to the
Court below concerned

+1 cc to M/s.S.Kaithamalai kumaran Advocate sr9348

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