



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 30.08.2019
DELIVERED ON:13.05.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
Crl.A.(MD)No.63 of 2013

WEB COPY

R.Rengaraj

.. Appellant

Vs.

P.Krishnamoorthy

.. Respondent

Prayer : This Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the acquittal passed in C.A.No.132 of 2008 on the file of the I Additional Sessions Judge (PCR), Trichy dated 05.10.2012 and restore the conviction judgment passed by the Judicial Magistrate Court No.V, Trichy dated 07.11.2008 in C.C.No.40 of 2008 by allowing this appeal.

For Appellant : Mr.S.Ravi

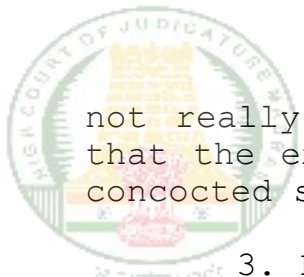
for Mr.K.K.Ramakrishnan

For Respondent : Mr.A.Uthayakumar for Mr.M.Karunanithi

JUDGMENT

This appeal has been filed by the complainant in C.C.No.40 of 2008, on the file of the Judicial Magistrate No.V, Trichy. It is a private complaint instituted for punishing the respondent herein for the offences under Section 138 of the Negotiable Instruments Act. The respondent was convicted by the learned Judicial Magistrate No.V, Trichy and sentenced to one year Rigorous Imprisonment and he was also directed to pay a compensation of Rs.2,00,000/- to the complainant. The default sentence of two months was imposed in the event of failure to pay the compensation amount. Aggrieved by the same, the respondent/Accused herein filed an appeal in C.A.No.132 of 2008 before the I Additional District and Sessions Judge (PCR), Trichy. The appellate Court by the judgment, dated 05.10.2012, allowed the appeal and acquitted the respondent/accused herein. Challenging the same, this appeal has been filed by the complainant under Section 378 of Cr.P.C.

2. The learned counsel for the appellant/complainant submitted that the trial Court rightly convicted and sentenced the respondent herein and that the said judgment of the trial Court did not call for any interference. His pointed contention is that the appellate Court lost sight of the statutory presumption available to the complainant under Section 139 of Negotiable Instruments Act. He also submitted that the appellate Court went wrong both in law as well as on facts. His pointed contention is that the accused had



not really denied the signature found on the complaint cheque and that the explanation given by him ought to have been rejected as a concocted story.

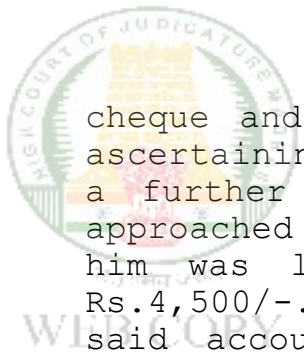
3. Per contra, the learned counsel for the respondent/accused submitted that this being an appeal against an acquittal, this Court should prefer the approach adopted by the appellate Court. He submitted that the appellate Court had passed a well reasoned order and called for dismissal of this appeal.

4. I carefully considered the rival contention and went through the entire evidence on record.

5. The case of the complainant/appellant is that the respondent borrowed a sum of Rs.2,00,000/- from him on 10.07.2000 with a promise to repay the same in six months. Towards discharge of his liability, the respondent issued the Cheque bearing No.592650, dated 14.02.2003 drawn on Union Bank of India, Trichy Branch, favouring the complainant for a sum of Rs.2,00,000/-. The cheque was presented for collection on 24.02.2003. It was returned un-paid. The complainant issued statutory notice dated 07.03.2003 and the same was received by the accused, who issued reply notice dated 22.03.2003. Since the accused did not comply with the demand set out in the statutory notice dated 07.03.2003, the complainant filed C.C.No.40 of 2008 on the file of the learned Judicial Magistrate No.V, Trichy. The complainant examined himself as P.W.1. He also marked the complaint cheque as Ex.P1. The return memo was marked as Ex.P2. The statutory notice was marked as Ex.P.3. The Acknowledgement Card was marked as Ex.P4. The reply notice, dated 22.03.2003 issued by the accused was marked as Ex.P5.

6. The accused, who denied the charge, examined himself as D.W.4. He also examined three other witnesses in support of his defence. He marked Ex.D1 to Ex.D8. As already pointed out, the learned trial Judge noted that neither the signature in the cheque nor his issuance was disputed by the accused and therefore, the presumption under Section 139 of the Negotiable Instruments Act was drawn against the accused. The learned trial Judge further held that the accused failed to rebut the aforesaid statutory presumption. In that view of the matter, it was concluded that the complainant had established the charge under Section 138 of the Negotiable Instruments Act against the accused beyond reasonable doubt and the accused was convicted and sentenced as mentioned above.

7. The first appellate Court noted that the complainant and the respondent had transactions with each other. The appellate Court noted that in his reply notice, dated 22.03.2003 (Ex.P5) the accused had stated that sometime in October 2000, the complainant approached him for a sum of Rs.4,000/- and since the accused was not



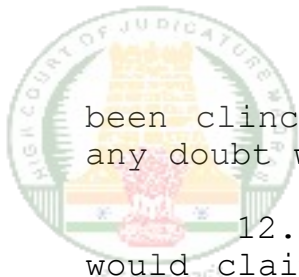
cheque and requested the complainant to fill up the amount after ascertaining the balance amount at the Bank. The accused had taken a further stand that thereafter the complainant had once again approached the accused and told him that the cheque earlier given by him was lost and requested him to issue a fresh cheque for Rs.4,500/-. In the meanwhile, since amount had been credited in the said account, the accused had no difficulty in issuing cheque No.592650 for Rs.4,500/-, which, according to the accused was encashed by the complainant on 14.11.2000. The accused in his reply denied that the cheque in question was issued for any liability. According to the accused, he was not liable to pay any amount to the complainant.

8. The first appellate Court noted that the accused had denied his liability at the earliest point of time. The accused had examined D.W.1 to D.W.4 and also marked Ex.D1 to Ex.D8. The appellate Court rightly noted that the standard of proof cast on the defence was only a preponderance of probabilities and not anything higher. The appellate Court noted that the complainant had not spelt out the circumstance or reason for advancing the loan amount of Rs.2,00,000/- on 10.07.2000. Except Ex.P1, the complaint cheque, the complainant has not placed any material or produced any witness for establishing the loan transaction. It was also noted by the appellate Court that the complainant has not adduced any proof to show that on the said date i.e., 10.07.2000 the complainant was possessed of funds to the tune of Rs.2,00,000/-. The complainant had also not demonstrated his means.

9. The complainant was cross-examined by the accused. In his cross-examination, the complainant had taken a stand that some 20 days prior to 10.07.2000, the accused asked for a loan of Rs.2,00,000/-. The complainant admitted that he did not part with the said amount immediately. But then, these aspects were not set out by the complainant either in his legal notice or in the complaint.

10. The claim of the complainant was that the loan was given by him since the accused had promised to repay the same within six months. The complainant had not issued any notice between 10.07.2000 to 07.03.2003. When the accused had promised to repay the loan in six months and he failed to do so, the complainant would have certainly taken some steps for getting his money back. No such step was taken by the complainant. Only after the cheque in question was returned unpaid by the Bank, Ex.P3 notice was issued on 07.03.2003.

11. The most important circumstances noted by the Courts below was that the accused had established beyond doubt that the cheque in question was issued by his banker way back in 2000. The entire cheque book from in which the complaint cheque leaf was drawn



been clinchingly proved by the accused. On this, there cannot be any doubt whatsoever.

12. When the learned counsel appearing for the appellant would claim that the accused had cleverly made use of cheque leaf that was issued by him by his banker, the accused had also established that the Cheque No.2512658 dated 30.11.2000 was reflected in the statement of account pertaining to the complainant maintained by the Sundaram Finance. D.W.2 Seenivasan was the Manager of Sundaram Finance and he has stated that Ex.D2 is the statement of account pertaining to the complainant and it shows remittance through Cheque No.2512658. Even though the said witness had stated that from the records available with them, there was nothing to show that the cheque was issued by the accused herein, through D.W.1 Gopalakrishnan the Manager, Union Bank, Trichy, it has been established that the said cheque belongs to the accused. This would certainly probablise the defence of the accused that he used to oblige the complainant once in a while depending on his need. He would further allege that even though they were good friends originally, on account of the business competition, their friendship came under strain. The complainant had made use of a cheque given by him in good faith in the year 2000. The appellate Court came to the conclusion that the accused had fully rebutted the presumption raised against him and he is entitled to acquittal.

13. In that view of the matter, the judgment of the trial Court was set aside and the appeal filed by the accused was allowed. It is well settled that if two views are possible, that which is in favour of the accused has to be adopted. This appeal arises from a judgment of acquittal, I have referred to the reasons assigned by the Court below in extenso. I fully concur with the reasons assigned by the first appellate Court. I find no merit in this appeal and accordingly, the same stands dismissed. No costs.

Sd/-

Assistant Registrar (Crl.side)

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Sub Assistant Registrar(CS)

am

To

1.The I Additional Sessions Judge (PCR), Trichy.

2.The Judicial Magistrate Court No.V, Trichy.

3.The Section Officer,Criminal Section,

Madurai Bench of Madras High Court,Madurai.(2 copies)

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13.05.2020