



IN THE HIGH COURT OF JUDICATURE AT MADRAS

[JUDGMENT RESERVED ON : 28.06.2021]

[JUDGMENT PRONOUNCED ON : 27.09.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.A.NO.313 OF 2015

R.Selvam

... Appellant/Complainant

.Vs.

Thangapoorani

... Respondent/Accused No.1

PRAYER:-

Petition filed under Section 378 (4) of Cr.P.C, to set aside the judgment of acquittal rendered on 10th November 2014 by the Appellate Court, Viz., learned XVI Additional Sessions Judge, Chennai in Crl.A.No.138 of 2010 and restore the judgment of conviction by the trial Court in C.C.No.6007 of 2006 on the file of the learned XXIII Metropolitan Magistrate at Madras against the respondent/accused-1.

For Petitioner : Mr.S.Santhosh Kumar

For Respondent : Mr.G.Anbuchezeian

JUDGMENT

The unsuccessful complainant is the appellant herein.

2. For the sake of convenience, the parties are referred as per the ranking before the trial Court.

3. The appellant, who was the complainant before the trial Court, impugning the acquittal judgment of the learned XVI Additional Sessions Judge, Madras dated 10th November 2014, whereby setting aside the judgment of conviction delivered by the trial Court on 16th July 2010 for an offence under Section 138 of the Negotiable Instruments Act.



guilty of the offence charged and hence convicted and sentenced the respondent and M.Ramkumar to suffer 6 months simple imprisonment and a fine of Rs.5000/-, in default has to undergo further simple imprisonment of three months.

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9. The respondent/accused No.1 along with his husband M.Ramkumar who has arrayed as accused before the trial Court preferred in C.A.No.138/2010 and by an order dated 10.11.2014, the learned XVI Additional Sessions Judge has allowed the appeal in entirety and hence the appeal by the complainant.

10. Heard both sides.

11. The sole point i.e., arises for consideration in this appeal is that; whether the first accused is the wife of the second accused is liable under Section 138 of the Negotiable Instruments Act.

12. The cheque was said to have been issued by A1 (wife) for the debt of A2 (husband).

13. Perused Ex.P2 cheque. It is issued in the individual capacity of A1 and not as a mandate holder as observed by the lower Appellate Court.

14. The learned counsel for the respondent has relied upon the 2005 SCC Online Mad 434 (2005) 2 MWN (Cri) DCC 41 (Mad) [R.Ravi Chandran V. C.Subramanian alias C.S.Maniam, Mandate Holder of M/s.Southern Biologicals, Coimbatore] wherein,

This Court has held that mandate holder though is an authorized signatory on behalf of the account holder complaint filed against the mandate holder and not against the account holder in whose account the cheque was drawn, is not liable.

Since the mandate holder is not a drawer in the real sense as it should be understood for the purpose of Section 138 of Negotiable Instruments Act.

15. On facts of this case on perusal of Ex.P2 is not issued on behalf of the Company. It is issued by the first accused who is the wife of the second accused under his individual capacity and hence the above decision is not applicable to the facts and circumstances of the case and thus I find that the reasoning given by the lower Appellate Court in acquitting the first accused by an erroneously considering that the impugned Ex.P2 cheque is a Company cheque and A1 is a mandate holder which is factually in error as indicated above.



16. For the sake of clarity, at the risk of repetition in the cheque amount Ex.P2 was issued by Ex.A1 in her personal capacity and therefore he is not a mandate holder his signature in Ex.P2 was admitted.

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17. Once the drawer admits the signature of the cheque, it is presumed that the drawer had given the cheque for discharging a legally enforceable debt or liability. The drawer is given an option to rebut the statutory presumption by adducing positive evidence in the form of proof.

18. The respondent was admitted a signatory in the covering letter (Ex.P1) issued along with her postdated cheque (Ex.P2). The signature and execution of the cheque by the respondent herein is not disputed and clear in view of the legal notice (Ex.P3) issued by the respondent herein just prior to the due date of the cheque.

19. Hence, on an combine reading of evidence of P.W.1 coupled with Ex.P3, this Court finds that prior to the execution of the cheque the private complainant/appellant has successfully demonstrated that:-

(i) Firstly, that the existence of business transaction between the appellant/complainant and the husband of the respondent.

(ii) Secondly, there was an outstanding to the extent of Rs.2,30,400/- payable by the husband of the respondent to the appellant/complainant.

(iii) Thirdly, the cheque (Ex.P2) was issued by her voluntarily at the request of her husband.

(iv) Fourthly, the respondent had assured that her husband was making all efforts to clear the dues.

20. Hence, the trial Court has rightly come to the conclusion that the private complainant is entitled for presumption under Section 138 of the Negotiable Instruments Act and the respondent having failed to rebut the presumption has laid the conviction.

21. On perusal of Ex.P1 has categorically stated that their pre-existing legally enforceable debt against the accused for the said amount of Rs.2,30,400/- Ex.P2 was issued and hence in the absence of any suggestive case being probablized by the respondent, the lower Appellate Court has wrongly construed and allowed the appeal and committed in error in setting aside the well considered judgment of the trial Court and hence, all the



findings rendered by the lower Appellate Court are hereby stands vacated and that of the trial Court is restored.

22. In view of the discussion in the preceding paragraphs, this Court holds that the conviction laid by the trial Court is restored. The order passed by the lower Appellate Court dated 10.11.2014 is set aside. The conviction passed by the trial Court is restored.

23. Accordingly, this Criminal Appeal is allowed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The XVI Additional Sessions Judge,
Chennai.
2. -do- Thro The Principal Sessions Judge,
Chennai.
3. The XXIII Metropolitan Magistrate at Madras.
4. -do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to Mr.S.Santhosh Kumar, Advocate, S.R.No.50045

CRL.A.NO.313 OF 2015

VSN-II(CO)
PBS/01/11/2021