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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.08.2021
PRONOUNCED ON : 15.12.2021

CORAM :

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.373 OF 2019
AND
CRL.M.P.NO.8084 OF 2019

S.Gunasekaran ...Appellant / Respondent /
Complainant

Vs.

Santhi ...Respondent / Appellant /
Accused

PRAYER : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, to set aside the order of the learned Principal District and Sessions Judge, Tiruvannamalai in C.A.No.15/2013 dated 25th March 2019 and restore the order of conviction passed by the Fast Track Judicial Magistrate Court, Tiruvannamalai in C.C.No.59 of 2011.

For Appellant : Mr.A.Ramesh, Senior Advocate
for M/s.Ram & Ram

For R1 : Mr.B.Kumarasamy

JUDGMENT

This Criminal Appeal has been filed to set aside the order of the learned Principal District and Sessions Judge, Tiruvannamalai, in C.A.No.15/2013, dated 25th March 2019 and to restore the order of conviction passed by the Fast Track Judicial Magistrate Court, Tiruvannamalai, in C.C.No.59 of 2011.

2.The appellant has filed a private complaint before the learned Judicial Magistrate, Tiruvannamalai, for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act in short), against the respondent/accused. The learned Judicial Magistrate, taken cognizance of the complaint on file in C.C.No.59 of 2011. After conducting trial, the learned Magistrate found the guilty of the respondent/accused for the offence under Section 138 of NI Act, convicted and sentenced to undergo 6 months Simple Imprisonment



and to pay a fine of Rs.14,40,000/- (Rupees Fourteen Lakhs Forty Thousand only) as compensation, in default, to undergo simple imprisonment for further a period of one month. Challenging the said judgment of the conviction and sentence, the respondent/accused filed an appeal before the Principal District and Sessions Judge, Tiruvannamalai. The learned Sessions Judge, taken the appeal on file in C.A.No.15 of 2013 and after hearing the arguments advanced on either side, came to the conclusion that the respondent/accused has not committed any offence under Section 138 of NI Act and set aside the judgment of the learned Judicial Magistrate, Tiruvannamalai and allowed the appeal. Aggrieved over the same, the appellant/complainant has filed the present appeal before this Court.

3.The case of the appellant as per the complaint filed under Section 138 of NI Act is that, the respondent/accused purchased the property from the complainant, who is the power agent of one Sri Harikrishnan, bearing Door No.1831/9, 3rd Street, Gubera Nagar, Tiruvannamalai. The total sale consideration was Rs.22,01,000/-. As the respondent/accused has not sufficient money for the purchase of the said property, she requested the appellant/complainant and his father to execute a sale deed by receiving a sum of Rs.7,61,000/-, so that the respondent/accused could raise a bank loan on the security of the sale deed and pay the balance sale consideration. Believing the said words, the appellant/complainant executed a sale deed on 27.01.2010 in favour of the respondent/accused. After the execution of the sale deed, the respondent/accused did not pay the balance sale consideration and therefore, the appellant/complainant insisted the respondent/accused to pay a sum of Rs.14,40,000/- as balance sale consideration, for which, the respondent/accused issued two cheques one cheque bearing No.159278, for a sum of Rs.7,25,000/- and another cheque bearing No.159279 for a sum of Rs.7,15,000/-, dated 15.12.2010. The respondent/accused has promised that she would make available necessary funds to honour the cheques, if the complainant presented the cheques for encashment on the date mentioned therein. The appellant/complainant presented both the cheques for encashment in his bank and the said cheques were dishonoured. The respondent/accused admitted the liability and issued two cheques to discharge the liability for a sum of Rs.14,40,000/- and she did not repay the money and therefore, the appellant/complainant sent a statutory notice, dated 20.01.2011. Though the respondent/accused has received the said notice, she failed to repay the money and therefore, the appellant/complainant filed a private complaint.

4.The learned counsel appearing for the appellant would submit that the issuance of cheques is admitted and the signature found in the cheques is also admitted. Once the execution of cheques is admitted, presumption is invoked as per



Section 139 of NI Act. The appellant, through oral and documentary evidence, had proved that the cheques issued only to discharge the debt. The learned Magistrate, has rightly appreciated the oral and documentary evidence and rightly convicted the respondent/accused and also awarded compensation of Rs.14,40,000/-to the cheques amount. Challenging the order of conviction, the respondent/accused approached the appellate Court. The lower appellate Court has failed to appreciate the evidence in a proper perspective and erroneously set aside the order of the learned Magistrate and allowed the appeal and acquitted the respondent/accused. Aggrieved by the judgment of the lower appellate Court, the appellant/complainant is before this Court by way of this appeal. The learned counsel appearing for the appellant would further submit that the transaction of sale is admitted and the issuance of cheques are also admitted, but the respondent/accused had failed to rebut the presumption and therefore, the judgment of the appellate Court is perverse and the same is liable to be allowed.

5.The learned counsel appearing for the respondent/accused would submit that the appellant/complainant has suppressed the entire material facts. The appellant sold the property to the respondent/accused, who has paid the entire amount towards sale consideration. The recital of sale deed itself would prove the same. Therefore, the appellant cannot lead any evidence against his own document. He would further submit that mere non-denial of the execution of cheques and the signature found in the cheques will not give any presumption to the appellant that the cheques were issued only to discharge legal debt. The presumption under Section 139 of NI Act is only the issuance of cheque for discharging any debt or liability and does not cover the cheque that was issued for legally enforceable debt.

6.The learned counsel appearing for the respondent/accused also placed reliance on the following judgments of the Hon'ble Supreme Court:

(i) In the case of Krishna Janardhan Bhat -vs- Dattatraya G.Hedge, reported in 2018(1) MLJ(Crl.) 1149.

(ii) In the case of R.D.Venkatesh -vs- D.M.Ariyappan, reported in (2017) 4 MLJ (Crl.) 290.

(iii) In the case of S.Shanmugavel -vs- N.Indhulekha, reported in (2017) 4 MLJ (Crl.) 593.

(iv) In the case of P.Dhanam -vs- G.Arjunan, reported in (2019) 1 MLJ (Crl.) 166.

(v) In the case of C.Surendaramoorthy -vs- K.Venkatachalapathi, reported in (2019) 1 MLJ (Crl.) 548. Though the learned Magistrate had failed to consider the legal principle as well as the factual aspects and erroneously convicted the respondent/accused, the lower appellate Court is a fact finding Court had re-appreciated the entire evidence and



set aside the judgment of the learned Magistrate and allowed the appeal. Therefore, there is no merit in the present appeal and the same is liable to be dismissed.

7. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the appellant and Mr.B.Kumarasamy, learned counsel appearing for the respondent/accused.

8.A reading of the complaint and the oral and documentary evidence of both parties, the crux of the case of the appellant is that the respondent/accused purchased the property from the appellant/complainant. The total sale consideration was Rs.22,01,000/- and since the respondent/accused did not have sufficient money to purchase the property, she requested the appellant/complainant to execute the sale deed by receiving a sum of Rs.7,61,000/- for payment of the balance sale consideration, she issued two cheques viz., cheques No.159278, for a sum of Rs.7,25,000/- and another cheque No.159279 for a sum of Rs.7,15,000/-. When the appellant/complainant presented the cheques issued by the respondent/accused, both the cheques were dishonoured. Therefore, the appellant/complainant sent a statutory notice dated 20.01.2011. In short, it is only for paying the balance sale consideration, the respondent had issued two cheques in the name of the appellant.

9.On a careful reading of the evidence of P.W.1 and also the sale deed, dated 22.01.2010, it is very clearly mentioned about the payment of sale consideration. In the sale deed itself, there is a recital that the appellant received the entire sale consideration. The sale consideration was fixed as Rs.22,01,000/-, for which, the respondent/accused paid Rs.2,00,000/- in cash and also paid a sum of Rs.8,01,000/- as cash on the date of registration of the sale deed and for the balance sale consideration of Rs.12,00,000/-, the respondent/accused issued Demand Draft in favour of the appellant and the same was also encashed and therefore, once it is stated in the sale deed itself, the entire sale consideration is said to have been effected by way of cash and demand draft. The appellant has clearly stated that the cheques were issued only for payment of sale consideration, which is contrary to the content of the sale deed. Therefore, it is for the appellant to prove the case beyond all reasonable doubt that the cheques were issued for discharging legally enforceable debt. No doubt, once the execution of cheques and the signature of the respondent were not denied, there is an presumption under Section 139 of NI Act. Cheques were issued for discharging any debt /liability, does not include for discharging legally enforceable debt. The lower appellate Court had rightly appreciated the said facts and also extracted the relevant portion of the deposition of the complainant during the cross-examination and also the relevant



10. The decision referred to by the learned counsel for the respondent/accused in the case of Krishna Janardhan Bhat -vs- Dattatraya G.Hedge, reported in (2018)1 MLJ(Crl.) 1149, wherein the ratio laid down by the Hon'ble Supreme Court regarding the presumption and the relevant portion is extracted hereunder:

I. Existence of legally recoverable debt is not a matter of presumption under Section 139 of the Negotiable Instruments Act, 1881. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability.

III. 'Accused need not step into the witness box to prove the defence. An accused has a constitutional right to maintain silence. The presumption of innocence is a human right.'

11.It is the settled principle of law, when the appeal filed against the judgment of acquittal, normally the appellate Court



will not interfere with the finding of the judgment of the acquittal, unless finding is perverse or the compelled circumstance to interfere with the judgment.

12. On a careful reading of the entire materials, this Court does not find any merit and there is no compelled circumstances to interfere with the judgment of the acquittal passed by the lower Appellate Court and there is no merit in the appeal and the same is liable to be dismissed.

13. Accordingly, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To

1. The Principal District and
Sessions Judge,
Tiruvannamalai.

2. The Fast Track,
Judicial Magistrate Court,
Tiruvannamalai.

3. The Public Prosecutor,
Madras High Court,
Madras.

+1cc to Mr. B. Kumarasamy, Advocate SR.No.67129

+2ccs to Mr. G. R. Hari, Advocate SR.No.66915

CRL.A.No.373 of 2019
and
Crl.M.P.No.8084 of 2019

SR(CO)
RVM(10/01/2022)