



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.359 OF 2019

T.Ramakrishnan

... Appellant

Versus

D.Rajendran

S/o, Duraiswamy

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment in C.A.No.87 of 2018 dated 26.04.2019 on the file of the learned 1st Additional District and Sessions Judge, Cuddalore and restore the judgment of the learned Judicial Magistrate No.II, Cuddalore in S.T.C.No.261 of 2012 dated 11.09.2018.

For Appellant : Mr. R.Karthikeyan

For Respondent : Mr. R.Rajavelavan

JUDGMENT

Criminal Appeal has been filed under Section 378 of the Code of Criminal Procedure, to set aside the judgment in C.A.No.87 of 2018 dated 26.04.2019 on the file of the learned 1st Additional District and Sessions Judge, Cuddalore and restore the judgment of the learned Judicial Magistrate No.II, Cuddalore in S.T.C.No.261 of 2012 dated 11.09.2018.

2. The appellant is the complainant and the Respondent is the accused. The appellant filed the private complaint before the learned Judicial Magistrate No.II, Cuddalore for the offence under section 138 of the Negotiable Instruments Act against the respondent. The learned Magistrate after the trial, convicted the respondent and directed to pay a sum of Rs.30 lakhs as compensation with interest, failing which default to undergo one year Simple Imprisonment. Challenging the said compensation, conviction and sentence, the respondent has filed the appeal before the Principal District Sessions Judge, Cuddalore in Crl.A.No.87 of 2018 and the same was made over to the I Additional District and Sessions Judge, Cuddalore for disposal.



The learned I Additional Sessions Judge, Cuddalore after hearing the arguments advanced on either side, perused the records, set aside the judgment of the Magistrate and allowed the appeal. Challenging the said judgment of appeal, the appellant/complainant has filed the present Appeal.

3. The learned counsel for the appellant would submit that the respondent issued a cheque for a sum of Rs.30 lakhs to the appellant and when it was presented before the bank, the same was returned for "funds insufficient". Thereafter he issued the statutory notice. The respondent received the notice and sent a reply stating false reasons and he has not repaid the said amount, therefore he was constrained to file the private complaint against the respondent before the Judicial Magistrate No.II, Cuddalore. The learned Magistrate rightly appreciated the evidence and convicted the respondent and directed to pay the compensation of Rs.30 lakhs and default sentence. Against which the respondent filed the appeal. The appellate court failed to appreciate the evidence and simply reversed the judgment of the Magistrate court on the ground that ingredients of 138 N.I Act has not been complied with and the respondent has sufficient funds on the date of the presentation of the cheque, even in his account, Rs.1,19,03,001/- is available and it is wrongly appreciated that once the cheque returned for the reason "insufficient funds" and after the receipt of notice, the respondent has not repaid the amount and the signature in the cheque is not in dispute. The respondent accused has to rebut the presumption in the manner known to law. The respondent has not rebutted the presumption, the appellate court failed to appreciate the evidence and simply reversed the judgment, which warrant interference of this Court.

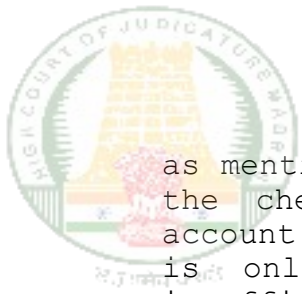
4. The learned counsel for the respondent would submit that the cheque is not issued on the date as stated by the appellant in the year 2012 and it was issued in the year 2009 and in the same year the amount was settled and also on the date of the presentation of the alleged / disputed cheque, there was a sufficient funds in his account and on 10.10.2012, Rs.1,19,03,001/- was in his account and further on the backside of the cheque, it has mentioned the authority seal is required and it is not returned for the want of sufficient funds. The Manager examined as P.W.2 has clearly stated that the cheque was not returned for the reason insufficient funds and it was returned for some other reason. After the receipt of the notice, the respondent has replied for the notice suitably. After receiving the reply from the respondent, the appellant has filed the complaint. Even the Magistrate also not appreciated the evidence and convicted the respondent and directed to pay the compensation of Rs.30 lakhs and default sentence. However, the appellate court rightly appreciated the evidence that the



5. Heard the learned counsel on either side and perused the records.

7. In this case the issuance of cheque is not in dispute. According to the appellant the cheque was issued by the respondent on 03.09.2012 for a sum of Rs.30 lakhs and he presented the cheque on 09.10.2012 and the cheque was returned for insufficient funds. Thereafter he issued the statutory notice. The respondent received the notice and did not repay the money within the statutory period. Therefore he has committed the offence. The trial court rightly appreciated the evidence whereas the appellate court failed to appreciate the same.

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as mentioned by the appellant and on the date of presentation of the cheque, there was sufficient funds in the respondent's account even more than one crore. The impugned cheque amounts is only Rs.30 lakhs. Therefore the reason stated that insufficient funds is not the correct reason. Therefore the cheque is only for the defect and therefore in the facts and circumstances, the accused has rebutted the presumption by preponderance of probability and the appellant has not proved his case beyond all reasonable doubt.

9. This Court perused the entire records and the judgment of both the courts below and there is no perversity in the judgment of the appellate court and there is no merit in the appeal and is liable to be dismissed and accordingly, the Criminal Appeal is dismissed.

s/d-
Assistant Registrar (CS VII)

True Copy

Sub-Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
I Additional District and Sessions Court,
Cuddalore.

2.The Judicial Magistrate No.II,
Cuddalore.

3.The Public Prosecutor
High Court, Madras -104

Copy To

The Section Officer,
Criminal Section
High Court, Madras.

+1cc to M/S.R.Karthikeyan, Advocate, SR.No.39607

CRL.A.No.359 of 2019

VSN-II (CO)
PM(09/09/2021)