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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.408 OF 2021

D.Rajasekar

... Appellant

Versus

Victor Jesudas

... Respondent

PRAYER:-

Criminal Appeal Case filed under Sections 378 of Criminal Procedure Code, against the Judgment dated 10.03.2021, in S.T.C.No.104 of 2018, passed by the learned Judicial Magistrate (Fast Track Court), Vellore.

For Appellant : Mr.Arun Anbumani

JUDGMENT

This Criminal Appeal has been filed against the Judgment of acquittal dated 10.03.2021, in S.T.C.No.104 of 2018, passed by the learned Judicial Magistrate (Fast Track Court), Vellore.

2. The appellant is the complainant. The respondent is the accused. The appellant filed a private complaint under Section 200 of Cr.P.C., as against the respondent for the offence under Section 138 of Negotiable Instruments Act, 1881, before the learned Judicial Magistrate (Fast Track Court), Vellore. The learned Magistrate has taken cognizance of the offence and taken the case on file in S.T.C.No.104 of 2018. After due enquiry, the court below dismissed the complaint and acquitted the respondent/accused, from the said offence.

3. Challenging the said Judgment of acquittal of the respondent/accused, the complainant has filed the present appeal before this Court.

4. The learned counsel for the appellant would submit that the respondent had admitted the signature and execution of the



cheque, therefore, the Trial Court ought to have raised a presumption under Section 139 of NI Act, in favour of the appellant. However, the learned Magistrate held that the cheque given by the respondent does not fall under the Explanation "legally enforceable debt or other liability" under the Act. The court below also erroneously held that the appellant/complainant has not proved his case as required under Section 138 of Negotiable Instruments Act, without properly appreciating the oral and documentary evidence. It is settled law that once the execution of cheque was admitted, the Courts has to draw the presumption under Section 139 of Negotiable Instruments Act, and it is for the accused to rebut the presumption. The appellant has given the sum of Rs.1,10,000/- to the respondent on the promise made by the respondent to secure a job and such amount was paid as a donation to the trust believing the representation made by the respondent that by disclosing such donation to the management, he would obtain a job for the appellant from the C.M.C. Hospital, Vellore. Further, the trial court erred in relying upon Section 23 of the Indian Contract Act, 1872, illustration (f) thereto to conclude that the cases filed for recovering the money given as bribe is opposed public to policy. In fact it was not the case of the appellant or the respondent that money was given as a bribe for obtaining an employment in public service. Therefore, the illustration (f) of the Section 23 of the Indian Contract Act, 1872 is not applicable to the facts of the present case. First thing is that the amount was not given by the appellant as a bribe to the respondent or for obtaining any employment in any Public Service. Secondly, in this case, the said money was to be construed as a bribe is an assumption but not conceded, since, the C.M.C Hospital at Vellore, is not a Government or Public Institution and it is only a private institution. Therefore, the learned Judicial Magistrate has failed to interpret the correct provision and wrongly come to the conclusion that the consideration of the cheque was only issued as a bribe, therefore, it is not legally enforceable debt. Accordingly, the Judgment of the Trial Court is perverse and it is liable to be set aside and the appeal has to be allowed, by convicting the respondent/accused for the offence under Section 138 of Negotiable Instruments Act, and sentenced him to pay compensation, which has to be twice the cheque amount.

5. I have heard the learned counsel appearing for the appellant and carefully perused the materials placed on record.

6. The case of the appellant/complainant is that on 01.11.2017, the appellant/complainant gave a sum of Rs.1,00,000/- to the respondent and further on, 13.11.2017, he gave a sum of Rs.10,000/- to the respondent, as a donation, by believing the promise made by the respondent/accused to secure a



job at C.M.C, Hospital to the appellant. But it is alleged that the respondent failed to secure employment as promised by him. Later the appellant asked the respondent to repay the said amount, therefore, the respondent issued a cheque towards repaying the above said amount. When it was presented to the bank for collection, the same was returned as "Insufficient funds", therefore, the appellant sent a legal notice on 14.05.2018 and the respondent has also replied for the same on 31.05.2018, by denying all the averments made in the legal notice. Thereafter, a private complaint was filed before the Judicial Magistrate (FTC), Vellore, for the offence under Section 138 of the Negotiable Instruments Act, 1881, against the respondent. The learned Judicial Magistrate, taken the case on file in STC.No.104 of 2018 and after considering the arguments on both sides, dismissed the case and acquitted the accused/respondent herein. Hence, the present appeal is filed before this Court.

7. Since, this Court is a final Court of fact finding, it can re-appreciate the entire evidence for giving independent findings. Accordingly, this Court re-appreciates the entire evidence and given the following findings.

8. Admittedly, the respondent/accused had issued a cheque in favour of the appellant/complainant. When the cheque was presented for collection in the bank, the same was returned with a memo that "there is no sufficient funds in the accounts of the respondent/accused" to honour the cheque. Therefore the appellant/complainant sent a notice on 14.05.2018 and respondent/accused sent a reply notice on 31.05.2018 by denying all the contents stated in the said notice. Therefore, the appellant/complainant has filed a private complaint against the respondent, before the Trial Court.

9. In order to substantiate his averments made in the complaint, the appellant examined himself as P.W.1 and six documents were marked as Ex.P1 to P6. On the side of the respondent/accused, one V.Venkata Subramaniam was examined as R.W.1 and no document was produced.

10. The learned Trial Judge, after considering the oral and documentary evidence placed before him, dismissed the complaint on the ground that the consideration in this case is against the public policy, and it is not legally enforceable debt, as per Section 23 and illustration (f) of the Indian Contract Act, 1872.

11. Though the learned counsel for the appellant has vehemently contented that consideration is not against public policy and it is not barred under Section 23 of the Indian

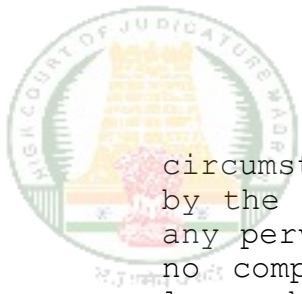


Contract Act, and it is legally enforceable debt, the learned Trial Judge has referred to illustration (f) to Section 23 of the Indian Contract Act and concluded that one who made promise to obtain employment in any of the Public Services, such promise or agreement to do so is void and the payment of consideration thereof is unlawful. In this case, the employment sought for by the appellant is not in any public service, it is only from the C.M.C Hospital at Vellore, which is a private institution in which only, for getting employment to the appellant, the respondent/accused said to have been made promise. Therefore, as per the illustration (f) of the Section 23 of the Indian Contract Act, CMC, Hospital is not a public service. Further, the respondent/accused issued a receipt for the donation paid by the appellant, hence, the amount said to have been paid by the appellant is only considered as a donation and therefore such payment will not fall under the category "legally enforceable debt". The execution of the cheque was admitted by the respondent/accused and the signature of the cheque was also admitted, but, the cheque was not issued for any legally enforceable debt and liability.

12. On reading of the entire materials it shows that the complainant accepted even in the grounds of appeal that he paid the money as a donation, not as a bribe. If once he admitted that he paid as a donation, it cannot be recovered and it is not a debt or liability. Even assuming that it is a donation or gift, made by a person, it could not be recovered, once gifted. Even if it is a gift, it is also not recoverable and it will not fall under the explanation to Section 138 of the NI, Act, "legally enforceable debt". Therefore, once the complainant admitted that he paid money to the respondent as a donation for securing a job from C.M.C Hospital at Vellore, even if it is a not a bribe still, it is not recoverable. Even it is a gift, a gift not a debt or liability. Even if it is donation, it is also not a debt or liability.

13. Therefore under those circumstances, admission of cheque and execution of cheque is not a criteria in this case. It has to be issued only for discharging debt or liability. The respondent/accused has rebutted the presumption by preponderance of probabilities, since the complainant himself admitted that he has paid the money by way of donation, therefore, according to this Court, donation will not fall under the debt or liability, it cannot be treated as legally enforceable debt.

14. Normally, when the appeal is against the Judgment of acquittal made by the Court below, this Court as an Appellate Court will not interfere with the order of acquittal, unless the Appellate Court finds that there is any perversity on the appreciation of the evidence or if there is any compelling



circumstances to interfere with the Judgment of acquittal passed by the Trial Court. But, in this case, this Court does not find any perversity in the appreciation of evidence and also there is no compelling reasons to reverse the Judgment passed by the learned Judicial Magistrate (FTC), Vellore and there is no merits in the appeal. Prima facie no grounds made out to admit the appeal and the appeal is liable to be dismissed at the admission stage itself.

15. Accordingly, the Criminal Appeal is dismissed by confirming the Judgment dated 10.03.2021, in S.T.C.No.104 of 2018, passed by the learned Judicial Magistrate (Fast Track Court), Vellore.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pbl/klt

To

1. The Judicial Magistrate
(Fast Track Court),
Vellore.
2. The Public Prosecutor,
High Court, Madras.

Copy To:-

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

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MT(CO)
PBS/16/03/2022