

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.505 of 2019

S.Ashok Kumar ... Appellant/ Respondent/ Complainant

Vs.

S.Boopal ... Respondent/ Appellant/ Accused

PRAYER: Criminal Appeal is filed under Section 378 of Cr.P.C. to set aside the Judgment dated 29.03.2019 passed in C.A.No.432 of 2018, on the file of the I Additional District and Sessions Court, Coimbatore, modifying the Judgment dated 26.09.2018 passed in C.C.No.504 of 2016, on the file of the learned Judicial Magistrate, Fast Track Court No.I, at ML, Coimbatore.

For Appellant : Mr.M.Marudhachalam

For Respondent : Mr.L.Mouli

J U D G M E N T

The complainant in C.C.No.504 of 2016, on the file of the learned Judicial Magistrate, Fast Track Court No.1, at ML, Coimbatore is the appellant in the present Criminal Appeal. The said Calender Case came to be instituted on complaint for an alleged offence punishable under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate, Fast Track Court No.1, at ML, Coimbatore, after trial held the respondent herein/accused guilty of the offence punishable under section 138 of the Negotiable Instruments Act, convicted him and sentenced him to undergo simple imprisonment for six months and to pay compensation of Rs.90,000/- as per Section 357 (3) of Cr.P.C to the complainant, within two months from the date of the Judgment, failing which, the accused shall undergo two months Imprisonment.

2. As against the said judgment of the learned Judicial Magistrate, Fast Track Court No.1, at ML, Coimbatore dated 26.09.2018 made in C.C.No.504 of 2016, the respondent herein/accused preferred an appeal before the learned Principal District and Sessions Judge, Coimbatore, and the same was taken on file in C.A.No.432 of 2018 and made over to the learned I Additional District and Sessions Judge for disposal. The learned appellate Judge, after hearing the appeal, allowed the appeal, set aside the conviction and acquitted the respondent herein/accused of the offence punishable under section 138 of the Negotiable Instruments Act for which he was prosecuted before the Trial Court.

3. As against the judgment of the learned I Additional District and Sessions Court, Coimbatore, dated 29.03.2019 made in C.A.No.432 of 2018, the petitioner herein/complainant has chosen to prefer the present Appeal.

4. The learned counsel for the appellant would submit that the respondent/accused has borrowed a sum of Rs.90,000/- from the appellant/complainant on 27.01.2015 and in order to discharge the legally enforceable debt, issued a cheque bearing No.928921, drawn on Karur Vysya Bank, Main Branch, Coimbatore, however, when it was presented for payment, the same was returned on 28.04.2015, with the endorsement "drawers signatures differs". Though the appellant has proved the charges levelled against the accused with acceptable evidence before the trial Court, however the appellant Court, without appreciating the same, acquitted the accused and therefore, the same is required to be interfered with.

5. The learned counsel for the respondent would submit that the respondent never borrowed money from the complainant and admittedly the cheque was returned with an endorsement "drawers signatures differs" and hence, the respondent sent a reply for the statutory notice and the appellant has not even sent any rejoinder to that reply and no effective steps have been taken to send the disputed cheque for expert opinion for comparing the signature. It is further contended that the respondent is only an auto rickshaw driver, whereas, the appellant/complainant is doing in computer business and it was not even stated in the notice. It is further submitted that the appellant has to prove the relationship between the respondent and the appellant, and admittedly, the appellant is a stranger and an unknown person, he also properly explained the reply notice, for which there is no rejoinder. Though the learned Magistrate convicted the respondent, the first appellate Court on proper appreciation of

evidence, set-aside the judgment of conviction and sentence and allowed the Appeal and there is no merit in the Appeal.

6. Heard the learned counsel on either side and perused the materials placed on record.

7. The appellant, as a complainant, filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent/accused. The case of the complainant is that the respondent/accused borrowed a sum of Rs.90,000/- by executing the cheque and when the said cheque was presented for encashment, the same was returned. Subsequently, he sent a notice and filed a complaint.

8. A perusal of the entire records and even in the statutory notice sent by the complainant, the respondent/accused has sent the reply and he denied the execution of the cheque. It is to be noted that the cheque was returned for the reason that the signature of the drawer differs. It is also to be noted that the appellant is a stranger and he has not proved that there was a transaction between the appellant and the respondent. When the cheque was returned for the reason that the signature differs, and the respondent/accused has taken a stand that the complainant is a stranger to the accused, it is for the appellant/complainant to establish the case and the appellant has not proved the same, and if once, execution of cheque is proved, the presumption under Sections 118 and 139 of the Negotiable Instruments Act can be drawn and the accused has to rebut the presumption that there is no legally enforceable debt and cheque has not been issued for legally enforceable debt, whereas in the present case, the appellant/complainant has not established the execution of the cheque and borrowal of the money, by the respondent/accused.

9. On a reading of the entire materials, the appellate Court, as a fact finding Court, has rightly re-appreciated the evidence in proper perspective, under the circumstances, this Court does not find any perversity in the judgment of the appellate Court, and there is no compelled circumstances or reason to interfere with the Judgment of acquittal, unless any compelled circumstances or reason warranted, this Court cannot interfere with the Judgment of acquittal.

10. In the result, this Criminal Appeal is dismissed, confirming the Judgment passed by the learned I Additional District and Sessions Court, Coimbatore in C.A.No.432 of 2018,

acquitting the accused for the offence under Section 138 of the Negotiable Instruments Act, setting aside the conviction and sentence passed by the learned Judicial Magistrate, Fast Track Court No.I, at ML, Coimbatore in C.C.No.504 of 2016.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional District and Sessions Court,
Coimbatore.
- 2.The Judicial Magistrate, Fast Track Court No.I,
at ML, Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to:

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

+1cc to Mr.L.Mouli, Advocate SR.No. 24957

+1cc to Mr.M.Marudhachalam, Advocate SR.No. 24801

CrI.A.No.505 of 2019

ssd(CO)

A.SK(22.06.2021)

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