



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.802 OF 2019

Kalaiaarasi

... Appellant

..Vs..

Gopi Prasanna

... Respondent

Prayer:-

Criminal Appeal Case filed under Sections 378 of Cr.P.C. to set aside and revise the judgment and order of acquittal passed in Crl.A.No.75 of 2018, dated 04.09.2019 by the learned Additional District and Sessions Judge, Fast Track Court, Villupuram, against the judgment of conviction and sentence passed in C.C.No.51 of 2016 by the learned Judicial Magistrate No.1, Villupuram, Dated 05.09.2018.

For Appellant : Mr.Suresh for M/s.J.Lenin

For Respondent : Mr.R.Ragavendran for
M/s.R.Murali

JUDGMENT

The criminal appeal has been filed against the reversal judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court, Villupuram, in C.A.No.75 of 2018 dated 04.09.2019 reversing the judgment of conviction passed in C.C.No.51 of 2016 by the learned Judicial Magistrate No.1, Villupuram, Dated 05.09.2018.

2 The appellant is a complainant and the respondent is an accused. The appellant filed a private complaint under Section 200 of Cr.P.C. against the respondent for the offence under Section 138 and 142 of Negotiable Instruments Act (in short "the NI Act") and the same was taken on file in C.C.No.51 of 2016 by the learned Judicial Magistrate No.I, Villupuram. The learned Magistrate, after trial, by judgment dated 05.09.2018, convicted the petitioner and sentenced him to undergo simple imprisonment for a period of six months and



ordered to pay the cheque amount of Rs.10,00,000/- to the complainant within a period of one month from the date of pronouncement of the judgment by the trial Judge. Aggrieved against the same, the respondent/accused filed an appeal in C.A.No.75 of 2018 and the learned Additional District and Sessions Judge (Fast Track Court), Villupuram, by judgment dated 04.09.2019 allowed the appeal and acquitted the respondent/accused by setting aside the judgment of conviction passed by the trial Court. Assailing the reversal judgment of acquittal, the complainant is now before this Court with the present criminal appeal.

3 The learned Counsel for the appellant would submit that respondent has not denied his signature found in the cheque and execution of the cheques and he has only taken the defence that he repaid the amount, but he failed to prove the same. Even though the trial Court, on appreciation of evidence in a right manner convicted the respondent, the lower appellate Court has failed to appreciate the evidence in a proper manner and wrongly acquitted the respondent/accused, which warrants interference of this Court.

4 The learned counsel appearing for the respondent would submit that even though the appellant himself stated that in the year 2013 he lent a sum of Rs.5,00,000/- by obtaining promissory note and subsequently he also lent Rs.4,00,000/-, but, he has not produced the promissory note said to have obtained by him. There are contradictions between the contents of statutory notice and the promissory note and also the evidence of the appellant/complainant with regard to the reasons for obtaining loan and date of issue of cheque. Hence, even though the trial Court convicted the respondent, the lower appellate after appreciating the above facts, rightly acquitted the respondent, which does not call for any interference.

5 Heard the learned counsel appearing on either side and carefully perused the materials placed on record.

6 The case of the appellant/complainant is that on 15.12.2013, the respondent/accused borrowed a sum of Rs.5,00,000/- for construction of house and to meet out his family expenses and promissory notes were also obtained by the appellant and later without repaying the above amount borrowed Rs.4,00,000/- and the respondent has not repaid any amount. Hence the appellant filed a complaint before Police Station and FIR also came to be registered in 84/2014 and thereafter the respondent executed a cheque bearing No.019011 dt:04.03.2015 for Rs.10,00,000/-, when the appellant presented the same for collection, the same was returned with an endorsement "payment stopped by drawer". Hence the appellant issued notice on

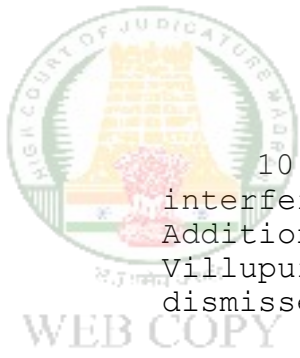


11.03.2015, the same was returned as unserved and therefore the appellant has filed the present complaint against the respondent for the offence under Section 138 and 142 of the NI Act.

7 It is seen that even though the appellant/complainant contended that there is no denial of execution of cheque and the signature found on the same, when the accused took a defense that he has repaid the amount, the complainant should have taken effective steps to disprove the same. Even though, the burden of proof by the complainant is not as heavy as that of the accused, it is for the complainant to prove that there is legally enforceable debt. The accused can always establish his defense through preponderance of probabilities. In this case, the respondent/accused has disproved the case of the complainant from the evidence of the complainant itself and the appellant/complainant miserably failed to establish the fact that there is legally enforceable debt. Hence the lower appellate Court, being a final Court of fact finding, has re-appreciated entire evidence and came to the conclusion that the appellant/complainant failed to prove his case and hence acquitted the respondent/accused.

8 This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, cannot sit in the arm chair of appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact. It can only see whether there is any perversity in appreciation of evidence by the Courts below.

9 A careful reading of the materials placed before this Court, it is seen that the petitioner obtained two promissory notes from the respondent/accused at the time of lending money to the accused. If at all the respondent/accused failed to repay the money as stated by the appellant/complainant, he should have approached the Civil Court to get relief, instead, he has approached the Police and hence this Court suspects the genuineness of the case of the appellant/complainant. Further, normally, the Court, will not interfere with the order of acquittal, unless there is any compelled circumstances warranting interference with the judgment of acquittal. In this case, the respondent/accused has disproved the case of the complainant by pointing out the contradictions between the evidence of appellant/complainant and the documents marked by him. It is for the appellant/complainant to prove that there is legally enforceable debt and this Court is of the view that the appellant failed to prove the same. When two views are possible, the view which favours the accused has to be taken into consideration and benefits of doubt should be extended to the accused.



10 In fine, this Court does not find any reason to interfere with the judgment of acquittal passed by the learned Additional District and Sessions Judge, (Fast Track Court), Villupuram. Accordingly, this criminal appeal shall stands dismissed in the admission stage itself.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court, Villupuram.
2. The Chief Judicial Magistrate,
Villupuram.
3. The Judicial Magistrate No.1,
Villupuram.

+1cc to M/s.R.Murali, Advocate, S.R.No.45655

Crl.A.No.802 of 2019

PM(CO)
CS/24/09/2021