IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.1055 of 2022

S.Murugan ...Appellant

-Vs-

G.Uthaman ...Respondent

This Criminal Appeal is filed under Section 378 Cr.P.C. praying to set aside the order dated 04.12.2020 in C.C.No.158 of 2017 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thiruvannamalai.

For Appellant : Mrs.G.Sumitra
For Respondents : Mr.P.Dhileepan

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JUDGMENT

The appellant is the complainant and the respondent is the accused. The appellant/complainant filed a private complaint under Section 200 Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Thiruvannamalai, and the learned Magistrate taken cognizance of the complaint in C.C.No.158 of 2017.

2 Case of the appellant/complainant is that the complainant is an agriculturist and doing real estate business also. The accused is a retired Teacher, who worked as a Head Master in Adayur Village for about 5 years and well known to the complainant, utilizing the same the accused demanded money to settle his urgent loan availed for his son and daughter's marriage. Based on the assurance given by the accused, the complainant advanced a loan for a sum of Rs.11,25,000/- and accused has also agreed to repay the loan within six months and also to pay interest at the rate of 24% p.a. and issued a post dated cheque dated 03.07.2009 bearing No.114970 drawn on ICICI Bank, Tiruvannamalai Branch for Rs.1,25,000/- and also a cheque dated 10.07.2009 bearing No.039038 drawn on ICICI Bank, Tiruvannamalai Branch for Rs.10,00,000/-. The accused assured the complainant that during first week of July, 2009 a sum of Rs.1,25,000/- will be available in his Bank Account and during the second week of July 2009 a sum of Rs.10,00,000/- will be available in his Bank Account. Thereafter on

17.06.2009, the accused again received a sum of Rs.2,50,000/- from the complainant by executing demand pro-note agreeing to repay the same with interest at the rate of 12% p.m. and assured to repay the amount as and when demanded by the complainant. On 03.07.2009, when the complainant presented the cheque bearing No.114970 for collection as advised by the accused, the same was returned with an endorsement "funds insufficient" through memo dated 10.07.2009. Further on the same day the complainant presented the another cheque bearing No.039038 and same was also returned on 21.07.2009 as "funds insufficient". Therefore the complainant issued a legal notice on 21.07.2009 demanding repayment of the loan amount and the accused has also received the same on 24.07.2009, but, neither he repaid the loan, nor sent any reply and hence the complaint.

3 In order to substantiate the complaint, P.Ws.1 and 2 were examined and 8 documents were marked as Exs.P1 to P8. On the side of the accused, no one was examined and one document was marked as R.W.1. After trial, the learned Magistrate dismissed the complaint and acquitted the respondent.

4 Aggrieved over the judgment of acquittal, the complainant has filed the present appeal before this Court.

5 The learned counsel appearing for the appellant/complainant would submit that the respondent/accused borrowed money and gave cheuqes towards discharge of the debt and when the complainant presented the same for collection as advised by the respondent/accused, it were returned and hence the complainant caused legal notice, but in spite of receipt of the notice, the respondent/accused neither repaid the amount nor sent any reply. Further, the respondent/accused admitted the signature and execution of the cheque and also borrowal of Rs.1.25 lakhs. Once signature and execution is admitted by the accused, initial burden has been proved by the complainant and then statutory presumption under Section 139 of NI Act would arise and it is for the accused to rebut the presumption in the manner known to law, whereas, in this case, the respondent/accused has not rebutted the same in the manner known to law.

6 The learned counsel would further submit that the trial Court failed to appreciate the legal as well as the factual aspects in the right perspective and dismissed the complaint. The learned counsel, to support his contention has placed reliance on the decisions of the Hon'ble Supreme Court in the following cases:

1. Criminal Appeal No.508 of 2019; Rohitbhal Jivanlal Patel vs. State of Guraj and others
2. Criminal Appeal No.362 of 2022; Tedhi Singh vs. Narayan Dass Mahant

7 Learned counsel appearing for the respondent/accused would submit that the appellant/complainant specifically stated that on 20.01.2009, the respondent borrowed a sum of Rs.11,25,000/- agreeing to repay the same with interest at 24% p.m. and issued post dated cheques and thereafter he borrowed a sum of Rs.2,50,000/- by executing demand pro-note agreeing to repay the same with interest at the rate of 12% p.a. It is to be noted that without receiving any interest or even part payment in the principal amount, for more than five months, according to the appellant/complainant, he again lent a sum of Rs.2,50,000/- to the respondent by obtaining demand pro-note and the pro-note was also not marked stating that the same was given to the Advocate for filing suit against the respondent and it is the fact that no suit was filed till date. No prudent man will lent money again, when the first debt and its interest was not paid. The complainant has stated that he is doing only real estate business and he is not an income tax assessee and he has no other source and hence the complainant has not proved the source to lend such a huge amount. The complainant has stated that on the date of lending money to the respondent, he was having only Rs.5.00 lakhs at his hand and he borrowed remaining amount from two of his friends, but the said friends have not been examined before the Court and hence he has not established his lending capacity. Even though, the complainant need not say anything about his lending capacity at the initial stage, when the accused specifically questioned about the financial capacity, it is the bounded duty of the complainant to explain and prove his lending capacity.

8 The trial Court, considering all these aspects, has come to the conclusion that the complainant has failed to prove his complaint and acquitted the respondent, unless there exists any perversity in appreciation of evidence by the Court below, the appellate Court should not interfere with the judgment of acquittal passed by the trial Court. To support his contentions, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in the case of Basappa vs. State of Karnataka in Criminal Appeal No.512 of 2014 and the decision of the High Court of Delhi in the case of Lyca Finance Ltd., vs. State and others in Crl.L.P.No.251 of 2013 and the decision of this Court in the case of Angu Parameswari Textiles (P) Ltd., and others vs. Sri Rajam & Co., in Crl.O.P.No.24075 of 2000. Therefore, there is no perversity in the judgment of acquittal passed by the trial Court and the appeal is liable to be dismissed.

9 Heard the learned counsel appearing for the appellant/complainant and the learned counsel appearing for the respondent/accused and perused the materials available on record.

10 This Court carefully gone through the entire materials and the judgment of the trial Court and the submissions made by the learned counsel on either side and also the decisions referred to by both the counsel.

11 It is the contention of the learned counsel for the appellant/complainant that the respondent admitted the signature and execution of the cheque and he also admitted that he borrowed Rs.1,25,000/-, but the trial Court without considering the case of the complainant, dismissed the complaint. From the materials, it is seen that the appellant/complainant specifically stated on 20.01.2009 the respondent/accused borrowed a sum of Rs.11,25,000/- agreeing to repay the same with interest at the rate of 24% p.a. and issued two cheques and the appellant/complainant admitted that the respondent/accused did not pay any interest for six months and again without receiving any interest or part payment in the principle amount, the appellant/complainant again lent a sum of Rs.2,50,000/- on 17.06.2009 to the respondent/accused. It is to be noted that no prudent man will lent money again, when he did not receive any interest for the earlier debt, which cause serious doubt in the case of the appellant/complainant.

12 Further, according to the appellant/complainant, he lent money again by obtaining a demand pro-note from the respondent/accused, which was given to the Advocate to file a suit against the respondent, but so far no suit has been filed and the appellant/complainant failed to produce the said demand pro-note to prove his version.

13 No doubt once execution and signature of the cheque is admitted, presumption under Seciton 139 of NI Act would come into play, but the said presumption is rebuttable presumption. The accused can always rebut the presumption by preponderance of probabilities or by way of cross examining the complainant or by producing any material.

14 This Court, being an appellate Court is a final Court of fact finding has to necessarily re-appreciate the entire evidence on record and give its independent findings. Accordingly, this Court while re-appreciating the entire evidence finds that the cross examination of P.W.1/complainant by the defence counsel clearly show that the respondent has rebutted the presumption in the manner known to law and the complainant has not proved his case beyond reasonable doubt.

15 Further, it is seen that the appellant/complainant admitted that at the time of lending money to the respondent/accused, he was having only Rs.5.00 lakhs on his hand and the remaining amount has been borrowed from his friends, but he did not name the friends and they were not examined before the Court to prove his version. Under such circumstances, this Court come to conclusion that the respondent/accused has rebutted the presumption. The citations referred to by the learned counsel appearing for the appellant/complainant are not made applicable to the present case on hand as the facts and circumstances are different from this case. Normally, the appellate Court would not interfere with the judgment of acquittal, unless there exists perversity or any compelled reason. This Court does not find any compelled reason to interfere with the judgment of acquittal and there is no perversity.

16 For the foregoing reasons, this criminal appeal stands dismissed as devoid of merit and substances.

18.10.2022

Index : Yes/No
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To

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thiruvannamalai.

P.VELMURUGAN, J.,

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