IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.28 of 2018

S.Bimal Kumar Jain ... Appellant

Vs

N.Jambulingam,
Proprietor,
Jambu Printing & Binding Works,
No.1A, Nancy Street,
Purasawalkam,
Chennai – 600 007. ... Respondent

Prayer:- Criminal Appeal filed under Section 378 of Criminal Procedure Code, to allow this appeal and set aside the judgment of acquittal passed in C.A.No.337 of 2005 on the file of the V Additional Session Judge, Chennai, dated 29.08.2017.

For Appellant : Mr.C.K.M.Appaji

For Respondent : Mr.G.Saravanan

<u>JUDGMENT</u>

This Criminal Appeal is directed as against the order of acquittal dated 29.08.2017, passed in C.A.No.337 of 2005 by the learned V Additional Sessions Judge, Chennai, thereby reversing the order of conviction dated 22.08.2005 in C.C.No.3240 of 1999 on the file of the VIII Metropolitan Magistrate, George Town, Chennai-1, for the offence under Section 138 of Negotiable Instruments Act, 1881 (herein after referred to as "the NI Act").

2. The appellant is the complainant and the respondent is the accused. The appellant lodged complaint alleging that the respondent is the Proprietor of Jambu Printing and Bindings Works and he borrowed a sum of Rs 1,00,000/- and Rs.50,000/- from the appellant on 10.04.1998 & 15.04.1998 respectively. On the same dates, he also executed two pronotes in favour of the appellant for the said sum together with interest of 36% per annum. In order to repay the said sum, he issued two cheques dated 20.06.1998 and 16.07.1998 for the sum of Rs.80,000/- and Rs.70,000/- respectively, drawn on the South India Bank. Both the cheques were presented for collection and both were returned dishonoured for the reason that funds insufficient. After issuance of statutory notice, the appellant lodged complaint for the offence under Section 138 of the NI Act.

3. On the side of the appellant, he examined P.W.1 and marked documents as Ex.P.1 to Ex.P.10. No witness has been examined on the side the respondent however, he marked one document as Ex.D.1. On a perusal of the oral and material evidences, the trial Court found that the respondent found guilty and convicted for the offence punishable under Section 138 of the NI Act and sentenced him to undergo simple imprisonment of six moths and to pay a fine of Rs.5000/- in default to under go simple imprisonment of two months. Aggrieved by the same, the respondent preferred an appeal in C.A.No.337 of 2005 and the appellate Court set aside the conviction and dismissed the complaint filed by the appellant, as against which the present appeal.

4. The learned counsel appearing for the appellant submitted that the appellate Court believed the contention of the respondent that he had no transaction with the appellant and the alleged cheques were given to one P.C.Jain. Further in the Ex.D.1, letter dated 18.07.1998 or in the Ex.P.9 reply notice, the respondent never denied the execution of pro-notes under Ex.P.1 & Ex.P.2. Further the appellate Court erred in coming

to a conclusion that the cheques might have been misused by the appellant and he has not established the source or mode of payment by adducing cogent and convincing evidence.

4.1. He further submitted that the respondent admitted his signature found in the cheque and also admitted his signature found in the promissory note. There is nothing to presume to the contrary that the cheque in question and the promissory note had been validly executed for the discharge of legally enforceable debt. The issuance of notice to P.C.Jain in reply to the notice issued by the appellant does not absolve or discharge the liability of the respondent.

4.2. Further the specific case of the respondent is that the cheques, which were issued to one P.C.Jain, were misused by the appellant herein. Though the respondent had taken the said specific stand, he failed to prove the same with substantive material with concrete evidence. Though the appellant failed to maintain any account, it does not mean that the respondent could not have borrowed any loan from the appellant. In fact, the respondent never questioned about the source of income available for lending loan and failed to call for any account statement or income tax return to establish that there is no legally enforceable debt. Even then, the first appellate Court reversed the finding of the trial Court. Therefore, he prayed to allow the present Appeal.

5. The learned counsel appearing for the respondent submitted that the alleged cheques were issued in the year 1993 only as a security to one P.C.Jain, who is none other than the brother of the appellant and the same have been misused by them. Therefore, the first appellate Court rightly held that the appellant failed to prove that the impugned cheques have been issued by the respondent against the discharge of any legally enforceable debt or liability. Hence, the interference of this Court doesn't warrant in the impugned judgement and prayed for dismissal of the appeal.

6. Heard Mr.C.K.M.Appaji, learned counsel appearing for the appellant and Mr.G.Saravanan, learned counsel appearing for the respondent.

7. On a perusal of records, the appellant examined P.W.1 viz., S.Ramachandran as his General Power Agent and he deposed that he is the one, who introduced the respondent to the appellant and he is the Manager of P.C. Jain. The said P.C.Jain and the appellant are brothers and he knew the transactions between P.C.Jain and the respondent. He further deposed that he also filed case as against the respondent in his individual capacity. On a perusal of the document, which was marked as Ex.D.1, letter dated 18.07.1998, revealed that Ex.P.2 series were given to one Padam Chand Jain, who is admittedly brother of the appellant. Subsequent to the said letter dated 18.07.1998, the cheques were deposited for collection on 15.12.1998.

8. It is not disputed that the appellant and one P.C.Jain are brothers. Thus, it is clear that the cheques might have been misused by the appellant without any legally enforceable debts. Therefore, essential ingredients of the Section 138 of NI Act have not been complied with by the appellant, since there is no legally enforceable debt. The presumption under Section 139 of NI Act is clearly rebutted by the respondent by the

oral and material evidence. Therefore, the appellant failed to prove that the impugned cheques have been issued by the respondent against legally enforceable debt or liability.

9. In view of the above discussions, this Court is of the considered opinion that the first appellate Court rightly allowed the appeal and set aside the conviction imposed on the respondent and there is no illegality or infirmity in the impugned judgment passed by the trial Court. The appeal is devoid of merits and it is liable to be dismissed. Accordingly, the Criminal Appeal stands dismissed.

29.09.2022

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

rts

G.K.ILANTHIRAIYAN, J.,

rts

To

1. The V Additional Sessions Judge,
   Chennai.

2. The VIII Metropolitan Magistrate,
   George Town, Chennai-1,

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