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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.211 of 2013

Sridhar Prasad ...Appellant/Complainant

vs.

Clara Betcy ...Respondent/Accused

Prayer: Criminal Appeal filed under Section 378(4) of Cr.P.C. praying to set aside the judgment of the Appellate Court dated 09.01.2013 passed in C.A.No.156 of 2011 on the file of the VI Additional Sessions Court, Chennai and restore the judgment of the XXIII Metropolitan Magistrate Court, Saidapet in C.C.No.9714 of 2009, convicting the respondent.

For Appellant : Mr.M.Deivanandam

For Respondent : Ms.S.Umamaheswari
Legal Aid Counsel

JUDGMENT

The appellant/complainant has filed this appeal seeking to set aside the judgment of acquittal rendered by the VI Additional Sessions Judge, Chennai in C.A.No.156 of 2011 dated 09.01.2013.

2. The appellant herein has filed a private complaint against the respondent under Section 138 of the Negotiable Instrument Act in C.C.No.9714 of 2009. The learned XXIII Metropolitan Magistrate, Saidapet, Chennai vide judgement dated 27.01.2011 had convicted the respondent and sentenced to undergo six months Simple Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. Aggrieved by the said order, the respondent herein has filed an appeal in C.A.No.156 of 2011 on the file of the VI Additional Sessions Court, Chennai and the learned VI Additional Sessions Judge had acquitted the respondent/accused. Challenging the order of acquittal, the appellant/complainant has preferred this appeal.

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3. The case of the appellant/complainant is that the respondent and the appellant have entered into doing business by purchasing old flats, renovating the same and sell them at higher price and thereafter share the profits. Based on the representation made by the respondent, the appellant had invested a sum of Rs.2,00,000/- for the purchase of flat, which belongs to D.W.2- K.Shaji and to sell the same at a higher price, after making necessary renovation. He issued two cheques bearing Nos.612133 and 612134 dated 15.05.2008, each for R.75,000/- drawn on Dhanalakshmi Bank Limited, T.Nagar, Chennai in favour of the said K.Shaji and a sum of Rs.50,000/- in cash, in total, he had paid a sum of Rs.2,00,000/- (Rupees Two lakhs only). To enforce the liability, the respondent had issued a cheque for a sum of Rs.3,00,000/- (Rupees Three lakhs only) for investment along with a covering letter dated 28.02.2009. The covering letter has been marked as Ex.P1 and the cheque issued by the respondent has been marked as Ex.P2. Thereafter, the cheque was presented for collection on 02.04.2009 with appellant's Bank, namely, TNSC Bank Limited, Ashok Nagar Branch, Chennai, but the same was returned for the reason, “Insufficient Funds” on 04.04.2009. The bank return memo dated 03.04.2009 has been marked as Ex.P3 and debit advice dated 04.04.2009 has been marked as Ex.P4. Thereafter, a statutory notice dated 09.04.2009 was sent to the respondent and the same was returned with an endorsement “No such addressee” and previous endorsement as “Door locked”. The postal return cover was marked as Ex.P6.

4. Before the trial Court, the complainant examined himself as P.W.1. The accused examined herself as D.W.1 and the said K.Shaji was examined as D.W.2. No defence side exhibits marked.

5. The trial Court, on considering the evidence and the materials, had given a finding that the respondent did not deny her signature and presumption has not been discharged, in view of Section 139 of Negotiable Instrument Act. Statutory presumption against the respondent and also on the ground that Ex.P1 covering letter given by the respondent is not denied and in which, issuance of cheque is confirmed, convicted the respondent as stated above. On appeal, the learned VI Additional Sessions Judge, Chennai had set aside the conviction.

6. The contention of the appellant is that the issuance of cheque is not denied by the respondent. She had also handed over the cheque along with a covering letter-Ex.P1. On reading of the covering letter, it is seen that the cheque for a sum of Rs.3,00,000/- dated 01.04.2009 drawn on ICICI Bank, Nungambakkam Branch, Chennai has been handed over to the appellant. Handing over is admitted. Further, dishonour of the cheque for insufficient funds and thereafter issuance of statutory notice are not disputed. Following the statutory conditions, the complaint has been filed.

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7. The appellant/complainant has examined himself as P.W.1 and marked documents. During cross examination, the respondent has not discharged the liability, which is a statutory presumption in any manner. The appellant re-affirms in the cross examination that he had paid Rs.2,00,000/- to K.Shaji. The said Shaji was not known to him. He was introduced by the respondent and on her assurance the amount of Rs.2,00,000/- has been paid to D.W.2. It was only by way of suggestion put forth to the appellant, it was the business investment by the appellant along with the respondent, anticipating future profit and benefit, the cheque- Ex.P2 has been issued in this case. This suggestion was also denied. Further, the respondent by examining herself as D.W.1, except for oral evidence, stating that she made investment of Rs.6,00,000/- for the purpose of Shaji's property. Shaji gave promise to return back Rs.6,00,000/-. Since the sale of flat could not be completed, Shaji could not return back Rs.6,00,000/-. The cheque given to the complainant was also dishonoured and further D.W.2-Shaji admits about the receipt of Rs.2,00,000/- from the complainant and attempts to wriggle out the accused.

8. The trial Court disbelieved the evidence of D.W.1 and hence convicted the respondent. The Lower Appellate Court acquitted the respondent on two grounds, viz., (i) the appellant admits that he had made a payment of Rs.2,00,000/- directly to D.W.2 by way of two cheques for a sum of Rs.75,000/- each, and Rs.50,000/- in cash and not to the respondent/accused and (ii) The statutory notice-Ex.P5 has been returned with postal cover-Ex.P6. In the postal cover the endorsement has been initially made as 'No such Addressee', which is not proper. The respondent is very much residing there, hence the service of statutory notice cannot be presumed to be proper and on its own had given a finding that the complainant has committed some trick and fraud in collusion with the postal authorities. Therefore, it was held that statutory notice was not served. Hence, the learned counsel for the appellant submitted that the acquittal rendered by the Lower Appellate Court has to be set aside and the conviction be restored.

9. Learned counsel appearing for the respondent submitted that in this case, the respondent jointly doing business with the appellant. In the covering letter-Ex.P1, it is clearly mentioned as “we are enter the business of one Mr.Shaji. He is selling his own flats. So Mr.Sridhar has investment Rs.2,00,000/-”. Further, in P.W.1's evidence, he admits that he had paid the amount of Rs.2,00,000/- to Shaji directly as follows:

(i) Two cheques bearing Cheque Nos.612133 and 612134 dated 15.05.2008 each for Rs.75,000/- drawn on Dhanalakshmi Bank Limited, T.Nagar, Chennai; and

(ii) Rs.50,000/- in cash.

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He admits that a sum of Rs.2,00,000/- has been given directly to Shaji, which is further fortified and confirmed with the evidence of D.W.1/respondent and D.W.2/Shaji. Further, in a joint business agreement when the business could not be concluded, there is no question of sharing the profit. The cheque was issued in anticipation of successful business. In this case, the purchase of flat and selling it in higher rate could not be made, which was admitted and accepted by D.W.2-Shaji. It is not the case of the appellant that the respondent had sold the property of Shaji and taken away the profit herself and further the complainant admits that the cheque was issued in repayment for the investment made in the business.

10. The learned counsel appearing for the respondent further submitted that D.W.2 admits that the respondent had issued a cheque of Rs.3,00,000/- only as security for the business investment. Further, D.W.2 confirms that his Flat is yet to be sold. The respondent had entered into witness box as D.W.1 and she had given an explanation as under what circumstances the cheque-Ex.P2 has been issued to the appellant. The trial Court, merely on the presumption that under Section 139 of N.I. Act finding that signature of the respondent not denied, convicted the respondent without considering these factual aspects. The Lower Appellate Court on considering the evidence independently, acquitted the respondent. The judgment of Lower Appellate Court is well reasoned one and needs no interference.

11. The learned counsel further submitted that on mere perusal of the cheque-Ex.P2, it can been seen that the cheque had been filled up by the appellant on its own and comparison of the hand writing in covering letter Ex.P1 and cheque-Ex.P2 would confirm the same. On the other hand, the appellant in his evidence had falsified by stating that the respondent had filled up the cheque. Finding various infirmities the Lower Appellate Court had acquitted the respondent.

12. Considering the submissions made by the learned counsel appearing on either side and on perusal of materials, it is seen that the appellant had entered into joint business with the respondent in making investment for purchase of flat, thereafter renovating the same and selling it for higher price. For this business, he had invested an amount of Rs.2,00,000/- and paid the same directly to D.W.2 Shaji, who is the owner of the flat situated at Ayanavaram. The said Rs.2,00,000/- has been paid by way of two cheques drawn on Dhanalakshmi Bank Limited, T.Nagar, Chennai, each for a sum of Rs.75,000/- and Rs.50,000/- in cash. It is not denied but an admitted fact. In Ex.P1-covering letter, joint business has been admitted. D.W.1 and D.W.2 confirm that the business could not fructify and hence, investments got blocked. The appellant does not dispute the same. Finding that it is a business venture entered into between the appellant and the respondent

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and the business venture could not succeed, anticipating future profit in the business venture, the cheque is issued. Based on the said findings. the Lower Appellate Court had acquitted the respondent. This Court finds no reason to interfere with the judgment of acquittal rendered by the Lower Appellate Court.

In the result, the Criminal Appeal is dismissed, confirming the acquittal of the respondent by the Lower Appellate Court in C.A.No.156 of 2011. This Court appreciate the Legal Aid Counsel, who made meticulous preparation and effective submission in this appeal.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Additional Sessions Judge,
Chennai.

2.-do- through The Principal Sessions Judge,
Chennai

3.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

4.-do- through The Chief Metropolitan Magistrate,
Egmore, Chennai.

Copy to:

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

2.The Secretary,
Tamilnadu Legal Service Authority,
High Court, Madras-104.

+2ccs to Mr.M.Deivanandam, Advocate SR. No. 22964
+1cc to Ms.S.Umamaheswari, Advocate SR. No. 23083

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GPL (CO)
PR (21/04/2022)

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