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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.360 of 2019

K.C.Gunasekaran

...Appellant/Complainant

Vs.

M.Rajasekar

...Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378(1) of Criminal Procedure Code, to call for the entire records and set aside the Judgment dated 16.11.2018 made in C.A.No.99 of 2017 on the file of the Court of I Additional District and Sessions Judge, Coimbatore in reversing the Order of conviction dated 19.04.2017 made in C.C.No.331 of 2013 on the file of the Court of Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore (CC.No.402 of 2004 of JM.No.3, Coimbatore) for the offence under Section 138 of the Negotiable Instruments Act and convict the Respondent/Accused.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.C.S.Dhanasekaran

ORDER

This appeal is preferred by the defacto complainant in C.C.No.331 of 2013 on the file of Court of Judicial Magistrate Fast Track Court at Magisterial Level-II, Coimbatore, which he had instituted for intituting an action for an offence under Section 138 of the Negotiable Instruments Act. After due trial, the learned Magistrate vide his judgment dated 19.04.2017 has acquitted the accused, and hence the defacto complainant has preferred this Appeal under Section 378(1) of Cr.P.C. after obtaining necessary leave.

2. The case of the appellant/defacto complainant is straightforward.

- That the appellant knew the respondent even earlier to 12.10.2003, and that on 12.10.2003, he advanced a loan amount of Rs.6 lakhs to the respondent against a promissory note executed by the latter. Thereafter, on 16.02.2004, the respondent issued a cheque bearing No.347692 drawn on



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State Bank of India, Kotagiri Branch, towards the discharge of this loan liability. The cheque was presented on the same day for encashment, but it came to be dishonoured for want of sufficient funds in the account of the respondent. Vide dishonour-memo and a debit advice dated 17.02.2004. On 01.03.2004, the defacto complainant issued a statutory notice requiring the respondent to pay the amount mentioned in the cheque. The respondent responded it with his reply dated 26.03.2004. However, before reply was received by the complainant, he laid the complaint under Section 200 Cr.P.C before the learned Magistrate, who took cognizance of the offence and issued summons to the respondents.

3. The matter went to trial. During trial, the defacto complainant examined himself as PW1. To substantiate his case, he produced Ex.P1 to Ex.P8, of which Ex.P1 is the original promissory note stated to have been executed by respondent on 12.10.2003, Ex.P2 is the cheque bearing No.347692 dated 16.02.2004 alleged to have been issued by the respondent, Ex.P4 is the cheque return memo, Ex.P6 is the copy of the statutory notice dated 01.03.2004.

4. On the side of the accused, he has examined the Bank Manager as DW1 and examined himself as DW2. He had produced about 9 documents, out of them, 2 documents are critical. First is the copy of the receipt issued by Sirumugai Police in CSR.No.1 of 2002. It inter alia indicates a complaint was made by the respondent on 04.01.2002 about a list of articles lost by the accused, and one of the items alleged was stated to be a cheque bearing No.347692(Ex.P2). Ext.D3 is the intimation given by the respondent to his bank about which DW.1, the bank official, has spoken, and Ext.D2 is the newspaper publication caused by the respondent on 06.01.2002.

5. Before embarking to narrate the line of appellant's argument, this Court considers it appropriate to introduce how the learned Magistrate has approached the matter :

(a)He finds that there is considerable contradiction between the sworn statement of the complainant/appellant and the complaint, but holds that this cannot be made use of, since summons has been issued under Section 204, and hence any statement made before the pre-cognizance stage cannot be made use of during post-cognizance stage.

(b)So far as the issue whether the cheque Ex.P2 was issued by the respondent to the appellant on 16.02.2004 was concerned, firstly, the respondent had given a police complaint on 04.01.2002 followed by an intimation to his banker vide Ex.D3 dated 05.01.2002, and that these are documents which had come into existence some two years prior to the alleged date of handing over of the cheque



(c) The learned Magistrate then holds that the evidence which the respondent has produced is adequate to shake the presumption under Section 139 of Negotiable Instruments Act, and since they have not been adequately explained by the complaint and dismissed the complaint.

8. It may be that the respondent may have assumed inconsistent plea vis a vis Ext.P-1 promissory note, but that cannot be telescoped to discredit the effect which Exts.D-1 to D-3 and testimony of D.W.1 creates. After all in a proceeding under Sec.138 of the NI Act, the Court will be looking more to the quality of evidence an accused produces and the extent of probability it creates for believing the defence version. If so viewed, this court does find that the judgement of the learned Magistrate does not even leave any space for existence of any probable alternate situation, let alone leaving anything to hold that it is perverse.



9. This Court does not find any merit in the appeal and the same is dismissed.

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Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

nr/msv

To:

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate
Fast Track Court at Magisterial Level-II
Coimbatore.

Copy To

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

+1cc to Mr.C.S.Dhanasekaran, Advocate SR.No.11449

+1cc to Mr.N.S.Sivakumar, Advocate SR.No.11402

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AK II (CO)
GMY (06/05/2022)