



Crl.A.No.374 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.07.2022

Judgment Pronounced on : **14.07.2022**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.374 of 2019

Sri Sai Jyothi Calenders,
Represented by its Proprietor,
P.Kameshwara Rao

.. Appellant

Versus

A.Ramesh

.. Respondent

Prayer: Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the judgment, dated 11.12.2018 passed in C.A.No.255 of 2016 on the file of the learned I Additional Sessions Judge, Chennai and confirming the order, dated 09.09.2016 in C.C.No.2712 of 2010 on the file of the learned Metropolitan Magistrate, F.T.C-IV, G.T, Chennai.

For Appellant : Mr.E.J.Ayyappan
Mr.G.Sundaravaradarajan

For Respondent : Mr.A.Ramaswamy

JUDGMENT



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The complainant, in a private complaint filed complaining an offence under Section 138 of the Negotiable Instruments Act, 1881, is the appellant before this Court. The appellant filed a complaint alleging that the appellant and the accused are known to each other well and the accused, to discharge his urgent expenses, had borrowed a sum of Rs.6,00,000/- on 10.02.2009, agreeing to repay the same with interest at the rate of 18% per annum. In discharge of the said liability, the accused issued the cheque, dated 07.07.2009 and when the cheque was presented for collection, the same is returned as “funds insufficient”. After issuing a demand notice and since the respondent/accused failed to make payment within the period of 15 days, the complaint was filed.

2. After recording the sworn statement and taking cognizance, the accused was summoned. Upon questioning, the accused denied the charge and stood trial. The complainant examined himself as P.W.1 and one *Amararam* as P.W.2. On behalf of the complainant, the original cheque was marked as **Ex.P-1**; the return memo as **Ex.P-2**; the debit advice as **Ex.P-3** and the demand notice as **Ex.P-4**. Upon questioning about the material evidence on record, the accused denied them as false. Thereafter, on behalf



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of the defence, the accused examined himself as D.W.1, one *D.Saral* as D.W.2 and one *J.Narasimma Rao* as D.W.3. On behalf of the accused, the plaint filed in O.S.No.545 of 2011 was marked as ***Ex.D-1***; the return statement in the said suit was marked as ***Ex.D-2***; the reply notice, issued by the accused to the demand notice, was marked as ***Ex.D-3***; the letter given by I.N.G. Vysya Bank was marked as ***Ex.D-4***; the private complaint filed by the accused at *Rajhamundry* was marked as ***Ex.D-5*** and the bank statement of the accused was marked as ***Ex.D-6***. Thereafter, the Trial Court proceeded to hear the learned Counsel on both sides and by its judgment, dated 09.09.2016, found the accused guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 and imposed a sentence of six months Simple Imprisonment and to pay a compensation of Rs.7,00,000/- to the complainant.

3. Aggrieved by the same, the respondent/accused preferred Crl.A.No.255 of 2016 and the learned I Additional Sessions Judge, Chennai, by a judgment, dated 11.12.2018, upturned the finding of the guilt into one of acquittal, as against which the present appeal is filed.



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4. Heard *Mr.E.J.Ayyappan*, learned Counsel for the appellant and *Mr.A.Ramaswamy*, learned Counsel for the respondent.

5. The learned Counsel for the appellant would submit that first and foremost, the reasons given by the appellant in not believing the original presentation of the complaint and holding that the complaint is presented beyond the period of limitation and that condonation of delay was also not filed and acquitting the accused, is unsustainable in law. He would submit that the complaint was duly presented, albeit, before the wrong Court. However, the presentation was recorded and the matter was returned with an endorsement to represent before the concerned Court, having territorial jurisdiction. Accordingly, instead of representing the complaint within a period of 30 days, the matter was represented along with 5 days delay in representation. The appropriate Court took the complaint on file and proceeded with the matter. Therefore, he would submit that the same would not in any manner bar the complaint as hit by limitation. Therefore, he would submit that the order of acquittal granted by the lower Appellate Court, is unsustainable.



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6. He would further submit that as far as the other allegations, which are considered by the lower Appellate Court is concerned, in this case, the defence of the respondent/accused has been different in the reply notice given by the accused and before the Court, the accused tried to take a defence that the complainant, along with a group of persons, had snatched away the subject matter cheque. However, the complaint filed by the accused, in this regard, was dismissed and no further steps were taken by him. As a matter of fact, the suit transaction is a genuine transaction and even the amount is reflected in the income tax returns filed by the appellant/complainant, but, however, by oversight, the same was not marked as an Exhibit. The complainant also filed a civil suit which is also pending before the Court in *Rajhamundry* and since the promissory note is filed in the said suit, it was not filed before the present Court.

7. The learned Counsel would further submit that the presumption under Section 139 of the Negotiable Instruments Act, 1881 enures to the benefit of the complainant and even though the defendant had examined the witness, namely the Bank Manager, the said defence will not take him anywhere. Merely because he had given stop payment on 20.04.2009 itself,



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the same cannot be held as conclusive proof as the accused was smart enough to issue a cheque which he has already given a stop payment. Therefore, in the absence of adequate amount in his account to honour the cheque, the said pleading ought not to have considered by the lower Appellate Court. The learned Counsel, explaining the version of the complainant regarding the other findings of the Appellate Court, would also submit that the Appellate Court, in an offence under Section 138 of the Negotiable Instruments Act, 1881, ought not to have taken into account the mere allegations which are not proved to the level of preponderance of probability and ought not to have acquitted the accused and therefore, he would pray that the appeal be allowed and the conviction be restored.

8. Per contra, the learned Counsel appearing on behalf of the respondent, by taking this Court through the evidence on record, would submit that in this case, the presentation of the very complaint itself is doubtful and there is no initial of the presiding officer and there is no seal of the concerned Court. On behalf of the accused, even the concerned Court official is also examined as a witness, who had confirmed that normally, on a presentation, it will be initialed by the learned Magistrate and there will



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also be the seal of the concerned Court. In the absence of the same, the endorsement, as if presented and returned, contained in blue ink without any signature of the presiding officer, has to be ignored in this case and only the date of representation has to be taken as presentation and therefore, the complaint is barred by limitation. Secondly, he would submit that even the representation was ordered by the concerned Court within a period of 30 days and if the complainant has to take advantage of the earlier presentation before the wrong Court, he ought to have represented within the time and having belatedly presented after a period of 35 days, the earlier presentation, in any event cannot enure to his benefit. Therefore, on this score also, he would submit that the complaint is barred by limitation.

9. This apart, the learned Counsel would draw the attention of this Court to the evidence of the complainant, wherein, in paragraph No.3 of his proof affidavit, he has stated that the accused was introduced to him through one of his friends in Chennai. Whereas in the plaint filed by him in *Rajhamundry*, it is clearly stated that the accused and the complainant are having their shops nearby and they were very close friends. Similarly, the date of issue of cheque, mentioned in the complaint as well as in the



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affidavit, is false, since, even prior to that, the complainant has issued stop payment and had given a complaint in which the C.S.R is given and even an enquiry is made with the complainant. He would submit that the letter of stop payment is marked by summoning the concerned official of the I.N.G Vysya Bank, which is on record as a defence document. He would submit that the defence which is taken i.e., the cheque being forcibly taken, which is also taken in the reply notice and pointing out certain portions of the reply notice, he would submit that the contention of the learned Counsel for the appellant is factually incorrect. He would submit that inspite of the receipt of the reply notice, the same was suppressed by the complainant in the complaint. Pointing out the sworn statement taken, he would submit that there are no necessary details in the sworn statement and therefore, the same itself is a ground for acquittal.

10. The learned Counsel would further submit that in this case, there was no averment in the complaint that P.W.2 filled up the said cheque. The same is an improvement during the trial and there was no reason for the accused to have the cheque filled up by P.W.2 who is the adjacent shop owner of the complainant. On the other hand, it may be seen that there were



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several disputes and the accused, in the evidence, stated that the complainant was a sleeping partner along with the accused in yet another business and the complainant did not even challenge the said statement by way of cross-examination. Therefore, in the absence of promissory note or proof for the liability, the accused, by examining defence witnesses has raised a probable defence in this case which has been considered in detail by the Appellate Court while acquitting the accused.

11. The learned Counsel would submit that this is an appeal against acquittal and therefore, unless the view taken by the lower Appellate Court is not at all a possible view, the finding of the acquittal can be upturned as to one of guilt. He would submit that the lower Appellate Court has given multiple reasons for acquitting the accused and therefore, prayed that this Court need not interfere with the finding of acquittal.

12. I have considered the rival submissions made on behalf of either side and perused the material records of the case. At the outset, this is an appeal against the order of acquittal. This Court, considering an appeal against an order of acquittal, would upturn the findings of the lower



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Appellate Court, if only the same is not a possible view. In this regard, as far as the first finding of the Trial Court, regarding the period of limitation and presentation is concerned, even though the Court staff was examined by the accused, he has stated that he was not the concerned staff during the relevant period. The complainant states that the complaint was presented before the appropriate Court and it was returned. Not making of initials and seal can be a mistake of the Court, for which, the complainant cannot be found fault with. In this regard, already, this Court, in the judgment in *A. Vinayagam Vs. Dr. Subash Chandran*¹, has categorically held that it is only the date of presentation of complaint which has to be taken into consideration for the purpose of limitation and not the representation. Even if there is a delay in representation, still the original date of complaint is only to be taken into account for the purpose of the limitation. Second, it is also held that the mistake of the Court cannot be put against the complainant, I am of the view that the said findings of the lower Appellate Court that the complaint is barred by limitation is not a possible view and is legally erroneous and therefore, the said findings cannot be sustained.

¹ 2000 SCC OnLine Mad 25



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13. Be that as it may, apart from the question of limitation, the lower Appellate Court, while re-appreciating the entire evidence on record, had rightly observed that the contention of the accused that the complainant is a sleeping partner of the Concern M/s. Ramesh Paper Marts was not at all denied by the complainant and therefore, this Court is of the view that the contention of the complainant that the accused was introduced through one of his friends in Chennai, in the year 2008, is unbelievable. Further, the Appellate Court had taken into consideration that the complainant, in his proof affidavit, has deposed to the effect that in the year 2008, the accused was introduced to him, but, in the cross-examination, had admitted that the accused was known to him for the past 30 years. Even in the plaint filed by the complainant himself he had stated that the complainant and the accused were moving hand in glove as thick friends and therefore, when the complainant states before the Court that the accused has vouched for the genuineness of prompt repayment of loan, the Appellate Court doubts the very advancing of the loan. Further, the Appellate Court had taken into account that on 20.04.2009 itself by **Ex.D-4**, the cheques, including the subject matter cheque, were requested not to be honoured by the accused. This fact has been established by the accused by examining D.W.3.



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Further, in the teeth of the fact that there was stop payment before the 2 ½ months before the alleged date of issue of the cheque, the further fact, that the cheque was filled up by P.W.2 after it is issued on 07.07.2009, was disbelieved by the Appellate Court, on the premise that when the complainant and the accused were known to each other for thirty years, the fact as to P.W.2 filling up the cheque, seems to be unbelievable. The very fact that the accused had initiated criminal proceedings even though belatedly and even after referral by the Police, filed a protest petition and thereafter, filed a private complaint, especially when he has issued stop payment for the cheque, creates a doubt in the case of the complainant so as to make out a probable defence that the cheque was not issued on 07.07.2009 at Chennai in the manner as projected by the complainant. Further, the Appellate Court also held that in view of the probable defence and in the absence of further proof towards the advancing of loan and discharge of legally subsisting liability, has come to the conclusion that the complainant has failed to establish his case about the legally enforceable liability and acquitted the accused. Therefore, I am of the view that even though the learned Counsel for the appellant was able to dislodge the finding regarding the limitation by projecting a clear-cut case, the finding of



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the lower Appellate Court, with regard to the merits after considering the factors and the discrepancies in the evidence of the complainant, coupled with the evidence adduced by the accused, cannot be upturned by this Court in the appeal against acquittal, as on the appreciation of the evidence, such a view by the lower Appellate Court is possible.

14. Therefore, finding no merits, this Criminal Appeal, against the order of acquittal, is dismissed.

14.07.2022

Index : yes/no
Speaking order/Non-speaking order
grs

To

1. The I Additional Sessions Judge,
Chennai.
2. The Metropolitan Magistrate,
Fast Track Court-IV,
George Town, Chennai.



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D.BHARATHA CHAKRAVARTHY, J.,

grs

Pre-Delivery Judgment in

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