



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.740 of 2019

AVR.Sathishkumar ...Appellant/Respondent/Complainant

Vs

M.Pushparajan ...Respondent/Appellant/Accused

Prayer: Criminal Appeal filed under Section 378 of CrPC, to set aside the judgment in Crl.A.No.163 of 2016 dated 10.01.2019 by learned 3rd Additional District and Sessions Judge, Chennai by reversing the judgment passed by learned Fast Track Court III (Metropolitan Magistrate), Saidapet, Chennai in C.C.No.51 of 2012 dated 12.05.2016.

For the Appellant : Mr.S.Nagarajan

For the Respondent : No Appearance

ORDER

This appeal is filed aggrieved by the judgment of the learned 3rd Additional District and Sessions Judge, Chennai in Crl.A.No.163 of 2016 dated 10.01.2019, in and by which the learned Sessions Judge acquitted the respondent / accused for the offence under Section 138 of the Negotiable Instruments Act, for which he was convicted by the learned Metropolitan Magistrate, Fast Track Court-III, Saidapet, Chennai.

2. Heard Mr.S.Nagarajan, learned counsel for the appellant. In spite of service of notice, none appears on behalf of the respondent / accused.

3.Learned counsel appearing on behalf of the appellant would submit that the learned Appellate Judge acquitted the respondent / accused on the ground that the complainant did not produce proof for advancing the loan of Rs.8 lakhs. This, according to the learned counsel for the complainant is erroneous, since there is presumption under Section 139 of the Negotiable Instruments Act. Learned counsel would further submit



that the contention of the accused is that he has issued a blank cheque in respect of a borrowal of some other loan to the third party. He has failed to prove the same. Therefore, the Trial Court rightly rejected the defence and once the complainant has duly presented the cheque, issued the demand notice and especially when there is no reply notice on behalf of the accused, the Trial Court rightly convicted the accused and findings of the Appellate Court are unsustainable.

4.I have considered the submissions made on behalf of the appellant. Perused the material records of the case.

5.As rightly pointed out by learned counsel for the appellant, the finding of the learned Appellate Court that the complainant has to prove the handing over of the said sum, may not be sustainable especially when the accused has neither pleaded by sending a reply notice nor filed any 313 statement to the effect of disputing wherewithal of the complainant to advance the loan amount. But, however, that alone is not the reason mentioned for acquittal by the Lower Appellate Court. The Lower Appellate Court considered the facts that firstly, even according to the complainant, this loan amount was given to a third person, who was a friend of his relative and the loan amount is given as cash. As per the evidence of the complainant itself, no other document in the nature of a promissory note nor any other confirmation was taken from the third party at the time of advancing of loan.

6.The Appellate Court considered the further evidence of the complainant that he did not remember the exact date of advancement of the loan. The complainant did not know the exact address of the accused but only was able to tell the name of the village alone. He did not remember the phone number and other details of the respondent / accused. The Appellate Court further took into consideration the admission of the complainant that the accused issued a blank cheque with only his signature and only his nephew, one Mohan filled up all other details. Whereas, the pleading in the complaint is that in the month of September, 2011, for repayment of the cheque, the accused issued a postdate cheque dated 11.10.2011. Therefore, the absence of this crucial pleading that the cheque was handed over as blank cheque with authority to the complainant to fill up the cheque, either in the complaint filed by the complainant or in the chief examination, was also considered by the Appellate Court and taking all these factors cumulatively, the Appellate Court has held that there is an iota of doubt in the case of the complainant and acquitted the accused by giving benefit of doubt.

7.In that view of the matter, the view taken by the



Appellate court is a possible view and this Court in the appeal against the acquittal cannot upturn such a finding where the view of the Appellate court is a possible view.

8. Therefore, this appeal fails and is accordingly dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The 3rd Additional District and Sessions Judge,
Chennai.
2. The Fast Track Court III (Metropolitan Magistrate)
Saidapet, Chennai.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S.Nagarajan, Advocate, S.R.No.36995

Cr1.A.No.740 of 2019

GSM(CO)
RGA(06/07/2022)