



WEB COPY



Crl.A.No.673 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.673 of 2022

S.Arivazhagan

... Appellant

Vs.

R.Dakshinamurthy

... Respondent

Prayer:

Criminal Appeal filed under Section 378 Cr.P.C., against the judgment dated 28.08.2020 passed in C.C.No.85 of 2015 on the file of the Fast Track Court at Magisterial Level, Tiruppur.

For Appellant : Mr.J.Pranklin

For Respondent : Mr.R.C.Paul Kanagaraj



CrI.A.No.673 of 2022

JUDGEMENT

WEB COPY

This Criminal Appeal has been filed against the judgment dated 28.08.2020 passed in C.C.No.85 of 2015 on the file of the Fast Track Court at Magisterial Level, Tiruppur.

2. Appellant is the complainant. Respondent is the accused. The appellant filed a private complaint under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act against the respondent before the Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruppur. The learned Magistrate taken the complaint on file in C.C.No.85 of 2015. In order to substantiate the averments made in the complaint, on the side of the appellant, two witnesses were examined as P.W.1 and P.W.2 and 19 documents were marked as Ex.P1 to P19. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and 41 documents were marked as Exs.D1 to D41. On conclusion of trial, the learned Magistrate acquitted the respondent, by dismissing the complaint filed by the appellant. Challenging the said judgment of acquittal of the respondent, the complainant has preferred this Criminal Appeal.



Crl.A.No.673 of 2022

3. The case of the appellant/complainant is that he is doing business of manufacturing readymade garments and the respondent/accused placed an order for supply of garments and the appellant supplied the same on credit basis for an outstanding amount of Rs.43,52,030/ -. The respondent after verifying the statement of accounts, issued three cheques bearing cheque Nos.397038, 397039 & 397040 drawn on Indian Overseas Bank, Velampalayam Branch, Tiruppur for total sum of Rs.9,10,000/- towards the part of liability amount and when two cheques were presented for collection by the appellant/complainant on 13.12.2013 in Indian Overseas Bank, Perumanallur Branch, Tiruppur and the same had been returned on 14.12.2013 for the reason “ funds insufficient”. Again on 20.12.2013, when the appellant/complainant presented the third cheque for collection and the same was also returned with an endorsement “funds insufficient”. Hence, the appellant/complainant had issued the legal notice on 30.12.2013 and despite the receipt of the same by the respondent/accused on 25.01.2014, he had sent a reply with false statement and therefore according to the appellant/complainant, the respondent/accused has committed an offence punishable under section 138 of the Negotiable Instruments Act.



Crl.A.No.673 of 2022

4. Learned counsel for the respondent/accused has submitted that the he was making cotton products by using appellant's machines and building on commission basis. Since the respondent has got more profits in the said business, the appellant started giving trouble and demanding more commission. They settled the dispute in the presence of mediators and on the result, the respondent has paid a sum of Rs.12,00,000/- to the appellant and agreed balance amount has also been paid to the appellant. Subsequently, the appellant using his influence, has given a false complaint against the respondent before the North Police Station, Tiruppur and in that inquiry, three cheques were received from him under threat and compulsion and as alleged by the appellant, no goods were supplied to him.

5. Business transaction between the appellant and the respondent is not in dispute. The respondent has stated that though he repaid money, the appellant threatened him and gave a false complaint before the police and the police called the respondent to the police station, under the guise of enquiry, obtained disputed cheques forcibly in the police station, by coercion. During cross examination, the appellant has admitted that he



Crl.A.No.673 of 2022

received sum of Rs.12,00,000/- from the respondent on 10.10.2013. There is no material to show that subsequent to the receipt of Rs.12,00,000/- on 10.10.2013, there was a business transaction between them. Further, the respondent during his examination as witness, he proved that the cheque was issued only in the police station. During cross-examination, the appellant has admitted Ex.D3-reply notice sent by him to the respondent, in which he has stated that the respondent has to pay only Rs.16,10,000/-and also accepted that he received sum of Rs.12,00,000/- on 10.10.2013. Though the signature is admitted and the execution of the cheque is also admitted, there is a presumption under Section 139 of the Negotiable Instruments Act and the complainant proved his initial burden. Then the onus has been shifted to the accused. It is for the accused has to rebut the presumption in the manner known to law. It is a well settled proposition of law that onus of proof of the accused is not that much heavy as that of the complainant and the accused always can rebut the presumption by preponderance of probabilities and need not rebut the presumption by let in direct evidence. In this case, on the side of the respondent, two witnesses were examined and 41 documents were marked. In the notice sent by the



Crl.A.No.673 of 2022

appellant, it is stated that amount due is only Rs.16,10,000/- and the respondent has paid Rs.12,00,000/- which was agreed by both the parties as full and final settlement. The appellant admitted Ex.D4 and also he has not disputed the same. As per Ex.D4, the balance amount is Rs.84,000/- whereas, in the complaint it has been mentioned for a sum of Rs.43,52,030/-. The respondent was able to substantiate that the cheque was obtained by the appellant in the police Station during enquiry, which clearly shows that the respondent has not issued the cheque voluntarily to discharge legally enforceable debt. This Court finds that the respondent has rebutted the presumption by preponderance of probabilities.

6. A careful reading of the records and evidence of both the appellant and the respondent and both oral and documentary evidence, the trial court found that the cheque was not issued for legally enforceable debt and on the date of presentation of the cheque, there was no legally enforceable debt, dismissed the complaint and acquitted the respondent.



Crl.A.No.673 of 2022

WEB COPY

7. It is a well settled proposition of law that appeal against acquittal, the appellate court cannot interfere unless it finds that there is a compelled circumstances and the findings of the trial court and appreciation of the evidence are perverse.

8. In this case, as discussed above, though signature of the cheques were admitted, the respondent has rebutted the presumption that under what circumstances the cheques were issued and also the respondent demonstrated that in the reply sent by the appellant, he demanded only Rs.16,10,000/- and subsequently, they arrived at a settlement in the presence of middle men. Ex.D4 clearly shows that on 10.10.2013, Rs.12,00,000/- was paid by the respondent and balance amount is Rs.84,000/-. It is not proved by the appellant that subsequent to Ex.D4, there was transaction between them and there was a liability to pay any debts by the respondent to the appellant.



Crl.A.No.673 of 2022

9. This Court as the Appellate Court while re-appreciating the evidence, finds that the respondent has rebutted the presumption and the complainant has not proved that the cheques were issued to discharge the legally enforceable debts or liabilities. Under these circumstances, this Court does not find any reason to reverse the judgment of acquittal and there is no reason to allow this Appeal and to set aside the judgment of trial court and there is no merit in the appeal and the same is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

03.11.2022

mfa
Index:yes/No
Internet:yes/No

To

The Judicial Magistrate,
Fast Track Court at Magisterial Level, Tiruppur.

P.VELMURUGAN, J.

8/9



WEB COPY



Crl.A.No.673 of 2022

mfa

Crl.A.No.673 of 2022

03.11.2022