0IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.1009 of 2022

T.V.Mayilsamy ...Appellant

Vs.

Soundharajan ...Respondent

Criminal Appeal Case filed under Sections 378 of Cr.P.C. to set aside the judgment made in C.C.No.250 of 2017 dated 22.11.2018 on the file of the Judicial Magistrate, Fast Track Court II, Coimbatore, by allowing the criminal appeal.

For Appellant : Mr.I.Abrar Mohamed Abdullah
For Respondent :

****

JUDGMENT

The criminal appeal has been filed against the judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court No.II,Coimbatore,in C.C.No.250 of 2017, dated 22.11.2018.

2 The appellant is a complainant and the respondent is an accused. The appellant filed a private complaint under Section 200 of Cr.P.C. against the respondent for the offence under Section 138 of Negotiable Instruments

Act (in short "the NI Act") and the same was taken on file in C.C.No.250 of 2017 by the learned Judicial Magistrate, Fast Track Court No.II, Coimbatore. To prove the case of the appellant/complainant, he examined himself as P.W.1 and marked six documents as Exs.P1 to P6. On the side of the defence, the respondent examined himself as D.W.1 and marked 18 documents as Exs.D1 to D18. The learned Magistrate, after trial, found that the appellant/complainant has failed to prove his lending capacity and also he has not proved that the disputed cheque was issued only to discharge the legally enforcible debt and hence by judgment dated 22.11.2018, acquitted the respondent.

3 Aggrieved over the finding of the trial Court and the judgment of acquittal, the complainant is now before this Court with the present criminal appeal.

4 The learned Counsel for the appellant/complainant would submit that respondent has not denied his signature found on the cheque and execution of the cheque. Therefore once signature and execution of the cheque is admitted, onus of initial burden has been proved by the complainant and the statutory presumption under Section 139 of NI Act would come into play and it is for the accused to rebut the presumption in the manner known to law. In this case the respondent/accused has failed to rebut the presumption in the manner known to law. The trial Court has failed to appreciate the evidence in a proper manner and wrongly acquitted the respondent/accused, which warrants interference of this Court.

5 Heard the learned counsel appearing for the appellant and carefully perused the materials placed on record.

6 According to the appellant, the respondent borrowed a sum of Rs.5,33,500/- on 08.07.2005 and executed promissory note and on 01.07.2006 he also executed a cheque to discharge the debt for a sum of Rs.5,33,500/- bearing No.137591 dated 01.07.2006 drawn at Tiruppur Catholic Syrian Bank. When the appellant presented the cheque on the same day, it was returned on 03.07.2006 with an endorsement “insufficient fund”.

Hence the appellant issued statutory notice on 18.07.2006, the respondent refused to receive the same. Therefore he filed the complaint against the respondent and the learned Magistrate has wrongly come to the conclusion that the appellant has not proved his case and acquitted the respondent.

7 It is the case of the respondent/accused that the father-in-law of the respondent was doing business at Tiruppur and he has three daughters and the respondent married one of his daughters. The respondent's father-in-law and his three daughters were jointly running a partnership firms and in one of the firms the respondent was also a sleeping partner. The said business were actively running between the year 1998 and 2004 and the father-in-law of the respondent had obtained a blank cheque from the respondent towards guarantee for the loan availed by him from the appellant and the appellant has misused the above cheque and filed the present complaint against the respondent. The respondent did not issue any cheque in favour of the appellant to discharge the legally enforceable debt.

8 When the respondent/accused has taken such a specific defence and marked documents to prove his version, it is for the appellant/complainant to produce the account details, when he himself admitted during cross examination that he was doing chit fund business. Except the cheque, promissory note and the communications between the Bank and the appellant, the appellant did not produce any other documents to show that on 01.07.2005, he lent money to the respondent and the respondent issued the disputed cheque only to discharge the legally enforceable debt, whereas, the respondent/accused has produced several documents, which clearly prove that earlier there were transactions between the father-in-law of the respondent and the appellant and there are several cases filed by the appellant pending before the various Courts. Therefore, even though signature is admitted by the respondent, he has denied the liability. Mere admission of the signature itself is not sufficient to draw the presumption and the appellant/complainant has to prove the fact that the cheque was issued only to discharge the legally enforceable debt. Onus of burden of proof of the respondent/accused is not as that of heavy of the appellant/complainant and no doubt, the presumption under Section 139 of NI Act can be rebutted in the manner known to law, which means the respondent/accused need not rebut the presumption by let in any direct evidence, he can always rebut the presumption through preponderance of probabilities. A perusal of the records shows that according to the appellant/complainant the respondent/accused issued the disputed cheque on 01.07.2006, if on the date of issuing the cheuqe, the respondent really was having sufficient funds in his bank account, he could have very well withdrawn and paid to the appellant/complainant. On the other hand, the appellant has not produced any account details, even though, he is doing chit funds business and therefore the trial Court found that the appellant has not discharged his burden and has not proved his case beyond reasonable doubt.

9 It is settled proposition of law that normally the appellate Court will not interfere with the judgment of acquittal, unless the appreciation of evidence by the trial Court is so perverse and there is any compelled circumstances to reverse the judgment of acquittal. This Court, as an appellate Court, has independently appreciated the entire evidence. From a careful perusal of the entire materials on record, this Court finds that the appellant has not proved the case with cogent evidence and except the appellant no one was examined on the side of the appellant. Further, when the respondent/accused stoutly denied the execution of the cheque Ex.P.2 and the promissory note Ex.P1, the appellant has not even examined the witness to Ex.P1 Promissory note and has not produced the statement of accounts to prove the fact that on 08.07.2005 the appellant lent money to the respondent and has not taken any effective steps to disprove the defence taken by the respondent/accused. Therefore, considering the facts and circumstances of the case, this Court does not find any perversity in appreciation of evidence by the trial Court.

10 Accordingly, this criminal appeal shall stand dismissed in the admission stage itself.

07.09.2022

Index : Yes/No
cgi

To

The Judicial Magistrate, Fast Track Court II, Coimbatore,

P.VELMURUGAN, J.,

cgi

Crl.A.No.1009 of 2022

07.09.2022