IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.10.2021

DELIVERED ON : 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.812 OF 2019

A.S.Ayyadurai
...Appellant/complainant

Vs

Selvasundari
...Respondent/Accused

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973, to call for the records and judgment in C.A.No.355 of 2018 dated 31.07.2019, passed by the II Additional Sessions Judge, Chennai, allowing the appeal and reversing the judgment passed in C.C.No.2345 of 2005 dated 22.06.2018, by the Fast Track Court-3, Saidapet, Chennai-600 015 and set a side the same.

For Appellant : Mr.L.Rajasekar

For Respondent : Mr.V.Sambamurthy

JUDGMENT

The appellant is the complainant and the respondent is the accused. The appellant filed a private complaint under Section 200 Cr.P.C against the respondent for the offence under Section 138 of the Negotiable Instruments Act, before the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, which was taken on file in C.C.No.2345 of 2005. The learned Magistrate, after trial, found that the respondent herein was guilty of the offence under Section 138 of the Negotiable Instrument Act and hence, by judgment dated 22.06.2018, convicted and sentenced him to undergo six months simple imprisonment and to pay the cheque amount as compensation to the appellant/complainant. The said judgment of the conviction was challenged by the respondent herein before the Principal Sessions Court, Chennai, in Crl.A.No.355 of 2018. The Principal Sessions Court, Chennai had taken the appeal on file and made over the same to the II Additional Sessions Judge, Chennai. The learned Sessions Judge after receiving the records and hearing the arguments on either side, reappreciated the entire evidence and by an order dated 31.07.2019, set aside the order of the trial Court and acquitted the respondent/accused herein for the offence under Section 138 of the Negotiable Instrument Act. Challenging the said judgment of acquittal, the appellant/complainant herein filed an appeal before this Court.

2. The case of the appellant is that the respondent borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) in the month of February 2004 for purchasing a property and agreed to repay the same with interest of 24% per annum. The respondent did not repay either principal amount or interest amount. Since the appellant demanded the money from the respondent, the respondent issued cheque bearing No.053272 for a sum of Rs.4,00,000/- (Rupees Four Lakhs only). The appellant/complainant presented the said cheque for collection in Panjab National Bank, Washermanpet Branch and the same was returned as "Funds insufficient" and the same was intimated to the respondent by the appellant. The respondent requested the appellant to re-present the cheque and he would make arrangement for the necessary funds. The complainant again re-presented the said cheque through Indian Bank, Royapettah Branch and the same was also returned with an endorsement of "Insufficient Funds". Therefore, the appellant issued a legal notice through his Advocate and after receiving the same, the respondent/accused has not come forward to repay the amount mentioned in the cheque. Thereafter, the petitioner has filed a private complaint before the Metropolitan Magistrate, Fast Track Court No.III. After trial, the learned Metropolitan Magistrate convicted the respondent. As against the conviction, the respondent filed an appeal before the II Additional Sessions Judge, Chennai. After hearing the arguments and considering the materials, the II Additional Sessions Judge, reversed the judgment and acquitted the respondent. Challenging the said judgment, the appellant/complainant herein is before this Court.

3. Since the lower appellate Court is the final Court of fact finding, it has to necessarily reappreciate the entire evidence and give an independent finding. It need not simply follow the finding of the trial Court or reason given by the trial Court and therefore, the power of the appellate Court is very clear that the appellate Court can reappriciate the evidence and independently give a finding. In this case, the appellant has not specifically given a date of lending money to

the respondent and simply said that in the month of February 2004, he borrowed the money and he has not stated as to whether, he obtained any document, like promissory note or cheque etc., and he has stated that the respondent did not repay the money and on his repeated demand alone, he issued a cheque on 10.07.2004 for a sum of Rs.4,00,000/- (Rupees Four Lakhs only).

4. The specific case of the appellant is that the respondent borrowed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) in the month of February 2004 for purchasing a property and agreed to repay the same with interest of 24% per annum. The respondent did not repay either the principal amount or interest amount. Based on the continuos demand of money, the respondent issued a cheque only for the principal amount.

5. It is seen from the records that the original cheque bearing No.053272 issued by the respondent for a sum of Rs.4,00,000/- (Rupees Four Lakhs only) was not marked before the trial Court and only xerox copy was marked as Ex.P.4 and in the complaint, it is stated that after filing of the complaint, he lost his cheque. Therefore, he has not marked the original cheque.

6. The case is of the year 2004, whereas the complainant has stated that the petitioner lost his cheque in the year 2008 and the copy of the complaint was marked as Ex.P6. In his evidence, he has stated that when he came to the Court for hearing on 09.07.2008, he lost his cheque, but he gave a complaint only on 29.07.2008. The appellant/complainant has not given a complaint immediately after missing his cheque before the police and he has not informed the Court. Therefore, the contention of the appellant is not believable. Once the signature and execution of the cheque are admitted, it is for the accused to rebut the presumption that the cheque was not issued to discharge the legally enforceable debt or liabilities and till the presumption is a rebuttable presumption, the accused has to rebut the presumption clearly by way of preponderance of probabilities.

7. In this case, the accused admitted the signature in Ex.P.1 and the appellant has not marked the original cheque, for which, he gave an explanation, which is highly doubtful.

8. The case of the respondent/accused is that he gave 8 cheques in favour of the Baluserry Benefit Chit Fund Pvt. Ltd., and after the clearance of the cheques, one cheque was used and the remaining 7 cheques were lost by the respondent. Immediately, on 03.05.2004, the respondent lodged a complaint before the Egmore Police Station and the appellant/complainant

has misused the said cheques and one Mariappan, who is the friend of the appellant, also misused one cheque and he filed a case under Section 138 of the Negotiable Instrument Act against the accused in C.C.No.2344 of 2005 before the trial Court and the same was dismissed for non-prosecution. Now, the present complainant also misused one cheque and filed the present complaint. The respondents clearly stated that in the back side of the cheque, the seal of the Baluserry Benefit Chit Fund Pvt. Ltd is available. In order to escape from the case, he has not filed the original cheque and created a drama, as if he lost his cheque during the transport. Therefore, the respondent/accused has rebutted the presumption that he has not borrowed any money from the appellant and he has not issued any cheque in favour of the appellant. The singed cheques were given to the Baluserry Benefit Chit Fund Pvt. Ltd., and one of the cheques was encashed by the Chit Fund Pvt. Ltd., and the remaining cheques were issued in favour of the respondent herein. The respondent lost the cheque and lodged the complaint in the year 2004.

9. The respondent/accused has not admitted the borrowal of money and issuance of the cheque in favour of the complainant. It is for the appellant/complainant has to prove his case that the respondent/accused issued the cheque to discharge the legally enforceable debt.

10. Taking note of the fact that the respondent/accused admitted the signature in Ex.P1 and invoked Section 138 of the Negotiable Instrument Act, the trial Court convicted the respondent. The trial Court failed to take note of the fact that presumption under Section 139 of the Negotiable Instrument Act is rebuttable presumption. The Appellate Court, as a final Court of fact finding, has rightly re-appreciated the entire evidence independently and also the defence taken by the respondent/accused and found that the accused has rebutted the presumption. Therefore, the lower appellate Court extended the benefit of doubt and found that the respondent/accused has rebutted the presumption in the manner known to law by producing the oral and documentary evidence.

11. Normally, the judgment of acquittal will not be interfered with unless there is any error in appreciation of the evidence or compelled circumstances. In this case also, the lower appellate Court rightly re-appreciated the entire evidence and materials and acquitted the respondent/accused. Now, the appeal is filed against the judgment of acquittal. While considering the appeal against acquittal, this Court has to see as to whether there is any compelled circumstance to interfere with the judgment of the lower appellate Court. On a reading of the entire materials, this Court finds that there is no

perversity in re-appreciation of evidence by the lower appellate Court and there is no compelled reason to interfere with the judgment of the lower appellate Court and the appellant herein has not produced the original cheque and also clearly stated that on the date of lending money, he has not obtained any document, like promissory note or cheque etc., from the respondent/accused and the cheque was obtained at a later point of time.

12. The appellant has stated that he lost his original cheque, but he has not given any complaint on the same day and particularly, he appeared before the Court on the same day and he has not informed the same to the Court and he informed to the Court only in the year 2008. Therefore, this Court does not find any perversity in re-appreciation of evidence while deciding the case by the lower appellate Court and there is no merit in this appeal.

In the result, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

tta

To

1. The II Additional Sessions Judge,
   Chennai.

2. The Fast Track Court-3,
   Saidapet, Chennai-600 015.

3. The Principal Sessions Court,
   Chennai.

4. The Metropolitan Magistrate,
   Fast Track Court No.III,
   Saidapet.

+1cc to M/s.L.Rajasekar, Advocate, S.R.No.7453

RGN(CO)
RLP(14/02/2022)