IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A.No.85 of 2015

Mr.K.Ganeshan ..Complainant/Respondent/Appellant

.vs.

1.M/s.Emm Yen Infomesh Business
Solution Pvt.,Ltd,
Rep.by its Managing Director
Mr.Nazeer Ahmed
New No.76, Old No.52, 2nd Floor
Sembudoss Street
Chennai 600 001.

2.Md.Nazeer Ahmed
Managing Director
New No.76, Old No.52, 2nd Floor
Sembudoss Street
Chennai 600 001.

3.Mrs.Husna Begum
Director
M/s.Emm Yen Infomesh Business
Solution Pvt.,Ltd,
New No.76, Old No.52, 2nd Floor
Sembudoss Street
Chennai 600 001.

Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, 1973, to set aside the judgment dated 28.11.2014 passed in C.A.No.94 of 2014, by the learned V Additional Judge, Sessions Court, City Civil, Chennai reversing the judgment dated 10.03.2014 passed in C.C.No.2448 of 2009 by the learned VIII Metropolitan Magistrate, George Town, Chennai.

For Appellant Mr.K.S.Ganesh Babu

For Respondents Mr.S.Ashok Kumar
Legal Aid Counsel

JUDGEMENT

This Criminal Appeal has been filed against the judgment and order passed by the V Additional Sessions Judge, Sessions Court, City Civil Court, Chennai, in C.A.No.94 of 2014, dated 28.11.2014, reversing the judgment and order passed by the learned VIII Metropolitan Magistrate, George Town, Chennai, in C.C.No.2448 of 2009, dated 10.03.2014, convicting and sentencing the respondents for offence u/s.138 of the Negotiable Instruments Act, 1881.

2.The appellant filed a private complaint against the respondents on the ground that the 2nd respondent availed a handloan of a sum of Rs.6,90,000/- on 21.01.2009, in order to redeem the jewels that were pledged. The further case of the appellant is that the 2nd respondent undertook that the jewels are going to be sold in the market rate and the entire amount that was borrowed will be repaid back. Believing the 2nd respondent, the hand loan was given by the appellant to the 2nd respondent.

3.It is alleged in the complaint that the 2nd respondent did not repay back the loan amount and hence, on 21.01.2009, the appellant lodged a police complaint against the 2nd respondent before B-2 Esplanade Police Station and an FIR came to be registered against the 2nd respondent in Crime No.49/2009 for offences u/s.406 and 420 IPC.

4.After the registration of the FIR, the 2nd respondent came to the police station and admitted about availing the hand loan from the appellant. He made a part payment of Rs.3,00,000/- and for the remaining amount of Rs.3,90,000/-, the 2nd respondent issued four cheques in favour of the appellant towards full and final settlement.

Recording the same, the police case was also closed. It is further alleged in the complaint that the appellant deposited the four cheques on 03.02.2009 and all the cheques were returned with an endorsement "payment stopped by drawer". Immediately, a legal notice dated 09.02.2001, was issued to the respondents calling upon them to pay the cheque amount within a period of 15 days. On receipt of the same, the respondents issued a reply notice dated 19.02.2009, denying the claim made in the statutory notice. Left with no other option, the appellant filed the private complaint against the respondents for offence u/s.138 of the Negotiable Instruments Act, 1881.

5.The appellant examined himself as PW-1 and the concerned Inspector of Police of B-2 Esplanade Police Station was examined as PW-2 and marked Ex.P.1 to Ex.P.9. The 2nd respondent examined himself as DW.1 and Ex.D.1 to Ex.D.13, were marked on the side of the defence. Out of these documents, some of the documents were marked by the defence during the cross examination of PW.2.

6.The Trial Court on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, came to a conclusion that the respondents have admitted the signature found in the cheques and there was absolutely no proof that the cheques were taken by threat and hence, the Trial Court invoked the legal presumption u/s.139 of the Negotiable Instruments Act, 1881, in favour of the appellant. Accordingly, the respondents were convicted for offence u/s. 138 of the Negotiable Instruments Act, 1881, and the second and third respondents were sentenced to undergo six months simple imprisonment and respondents 1 to 3 (A1 to A3) each was sentenced to pay a fine of Rs.5,000/- and in default, to undergo, one month simple imprisonment and further to pay compensation of a sum of Rs.3,90,000/- u/s.357(3) of Cr.PC.

7.Aggrieved by the judgment and order passed by the Trial Court, the respondents filed an appeal before the Appellate Court in C.A.No.94 of 2014 and the Appellate Court on considering the facts and circumstances of the case and on reappreciation of the oral and documentary evidence and after considering the findings of the Trial Court, reversed the judgment and order passed by the Trial Court and allowed the appeal and thereby acquitted all the respondents. Aggrieved by the same, the present criminal appeal has been filed before this Court by the complainant.

8.Heard Mr.K.S.Ganesh Babu, learned counsel for the appellant and Mr.S.Ashok Kumar, Legal Aid Counsel for the respondents.

9.In the instant case, the manner in which the entire transaction had taken place does not look normal. According to the appellant, the 2nd respondent (A.2) received a hand loan of a sum of Rs.6,90,000/- on 21.01.2009**,** for redeeming the pledged jewels. On the same day, the 2nd respondent failed to repay back the hand loan. On the very same day, the appellant has given a police complaint before the B-2 Esplanade Police Station and an FIR came to be registered in Crime No.41/2009. On the very same day, the 2nd respondent was brought to the Police Station. It is alleged in the complaint that the 2nd respondent paid a sum of Rs.3,00,000/- towards part payment to the appellant. For the balance amount of Rs.3,90,000/- four cheques were given by the 2nd respondent. Accordingly, the complaint was closed on 22.01.2009 (i.e) the very next day.

10.Admittedly, the transaction was between the appellant and the 2nd respondent. Whereas the cheques in question are said to have been issued in the name of the Company (A.1) and it was signed by A.2 as the Managing Director. The wife of the 2nd respondent was arrayed as A.3 in the complaint. There are absolutely no specific allegations against A.3 in the complaint and A.3 has been suddenly brought in as an accused in the complaint just because she happens to be the wife of A.2.

11.There is no dispute with regard to the fact that the cheques were taken from the 2nd respondent only in the police station. According to the appellant, the 2nd respondent wanted to escape from the criminal case registered against him and hence, he voluntarily gave the four cheques along with the letter marked as Ex.P.2.

12.On carefully reading the deposition of the appellant, who was examined as PW-1, it reveals that the appellant had in fact gone to the house of the 2nd respondent when the 2nd respondent was in the police station and had collected a sum of Rs.3,00,000/- from his wife. Whereas in the complaint, the appellant has alleged as if the 2nd respondent handed over the sum of Rs.3,00,000/- towards part payment. It is also clear from the evidence of the appellant that the 2nd respondent was kept in the police station till early morning on 22.01.2009 and the appellant had left the police station at about 3.00 am., on 22.01.2009, after receiving the cheques. It is quite evident from the deposition of the 2nd respondent, who was examined as DW-1 that the cheques were taken from him by force at about 1.30 am., on 22.01.2009. It is quite apparent that the cheques were taken from the 2nd respondent at an ungodly hour. That by itself reflects the abnormal manner in which the cheques were collected from the 2nd respondent.

13.On carefully going through the materials available on record, it is seen that the 2nd respondent while examining himself as DW-1 has marked Ex.D-3 and Ex.D-4. Ex.D-3 is a letter dated 22.01.2009, which was addressed by the 2nd respondent to the appellant, wherein, he specifically states that four cheques were taken from him by force. Ex.D-4 has been marked which is the acknowledgment for the receipt of this letter. The appellant is completely denying this letter. However, the letter contains the original receipt that was issued by the post office for having sent the letter through registered post acknowledgment due. The name of the appellant and the date (22.01.2009) is clearly seen from this receipt. Therefore, a mere denial of this letter will not discredit this letter and this letter gains significance *prima facie* to come to a conclusion that the 2nd respondent at the earliest point of time had taken the stand that the cheques were taken away from him by force.

14.The evidence of PW.2 virtually damages the case of the appellant. PW.2, who is the police officer has deposed that the appellant informed that the entire dispute has been resolved and accordingly, the case was closed on 22.02.2009. PW.2 has safely deposed as if, the 2nd accused did not even come to the police station. It is quite natural for PW.2 to take such a stand in order to play it safe and not get into the private dispute between the appellant and the 2nd respondent. If PW.2 has specifically deposed that the 2nd respondent did not come to the police station, it goes completely against the averments made by the appellant in the complaint, as if the cheques were given by the 2nd respondent to the appellant only in the police station.

15.The 2nd respondent did not deny the fact that the signature found in the four cheques was his signature. The Trial Court based on this undisputed signature, straightaway came to a conclusion that the legal presumption must be drawn in favour of the appellant u/s.139 of the Negotiable Instruments, Act, 1881. The Trial Court brushed aside the rebuttal on the part of the 2nd respondent by giving a finding that there is no proof for taking the cheques by exerting threat**.** Unfortunately, the Trial Court failed to notice that the 2nd respondent was summoned to the police station after the registration of FIR based on the complaint given by the appellant and the appellant was made to stay in the police station during the entire night on 21.01.2009 and early morning on 22.01.2009. When the 2nd respondent was in the police station, the appellant goes to the house of the 2nd respondent and collects a sum of Rs.3,00,000/- from the wife of the 2nd respondent, but makes a false averment in the complaint as if the 2nd respondent paid the sum of Rs.3,00,000/- directly to the appellant. The Trial Court also did not notice the fact that the 2nd respondent issued a letter dated 22.01.2009, complaining about the four cheques being taken away from him by exerting threat in the police station. There was no response from the appellant for the letter. Added to this, the deposition of PW.2 goes completely against the averments made by the appellant in the complaint. All these factors are sufficiently enough to conclude that the respondents have rebutted the legal presumption by applying the test of preponderance of probabilities.

16.The Appellate Court has rightly discussed all these facts and come to a correct conclusion that the legal presumption has been rebutted by the respondents. The Appellate Court has also considered the findings of the Trial Court and given cogent reasons as to why those findings are unsustainable. This Court does not find any ground to interfere with the judgment of the Appellate Court.

17.The learned counsel for the appellant relied upon the judgment of the Hon'ble Apex Court in ***P.Suresh Kumar .v. R.Shankar*** reported in ***2007(2) CTC 670***. To substantiate his argument that just because the cheques were given in the police station, there is no presumption that it was taken by using force. There is no quarrel with regard to the preposition that has been laid down by the Hon'ble Apex Court. In the instant case, there are sufficient materials to come to a conclusion that the cheques were forcibly taken from the 2nd respondent in the police station. Hence, the judgment that was cited by the learned counsel for the appellant does not in any way help the appellant.

18.In the light of the above discussion, the judgment and order passed by the V Additional Judge, Sessions Court, City Civil, Chennai in C.A.No.94 of 2014, dated 28.11.2014, is hereby sustained and this criminal appeal stands dismissed.

27.03.2023

KP
Internet : Yes/No
Index : Yes/No
Speaking Order :Yes/No
Neutral Citation :Yes/No

To

1.V Additional Judge
Sessions Court,
City Civil, Chennai

2. VIII Metropolitan Magistrate
George Town, Chennai.

N.ANAND VENKATESH, J.

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