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Crl.A.No.333 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.333 of 2021

R.Pratap Gupta

... Appellant

Vs.

A.Ramesh Babu @ Ramesh Reddy

... Respondent

PRAYER : Criminal Appeal has been filed under section 378 of Criminal Procedure Code to call for the records and set aside the judgment of acquittal dated 29.12.2020 in C.C.No.6531 of 2016 passed by the learned Metropolitan Magistrate Fast Track Court No.I at Egmore, Allikulam, Chennai.

For Appellant : Mr.M.Anandaraj

For Respondent : Mr.P.Thinesh

JUDGMENT

This Criminal Appeal is filed challenging the order passed by the learned Metropolitan Magistrate Fast Track Court No.I, Egmore, Allikulam, Chennai, in C.C.No.6531 of 2016 dated 29.12.2020.



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2. This is a case of dishonouring of the cheques issued by the respondent to the appellant for a sum of Rs.45,00,000/- to discharge the loan borrowed by the respondent/accused from the appellant/complainant towards his business.

3. The claim of the complainant is that the accused for his business purpose borrowed a sum of Rs.45 lakhs from the complainant. After repeated demand to repay the loan, the accused gave the cheques for Rs.19,56,000/- bearing No.509654 dated 30.06.2016 and for Rs.21,80,000/- bearing No.509655 dated 06.03.2016 drawn from ICICI bank, T.Nagar branch, Chennai. The said cheques when presented for collection were returned with an endorsement "Funds insufficient". After receiving intimation from the bank, legal notice has been issued by the complainant, but the respondent failed to pay the cheque amount. Hence, the complaint filed before the Metropolitan Magistrate within the statutory notice period prescribed, who took cognizance of the offence in C.C.No.6531 of 2016 and tried the matter.



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4. To prove the complaint, the appellant examined himself as PW.1 and marked 5 exhibits. To rebut the presumption, no witness has been examined on the side of the accused, but marked 4 exhibits.

5. The Trial Court on appreciation of evidence held that, though the accused admitted his signature found in the cheques, the contention of the accused is that he had given a blank cheques for the loan of Rs.5,00,000/- borrowed from the complainant. The complainant has failed to prove the foundational fact to drop the presumption under Section 139 of N.I.Act. Payment of Rs.45 lakhs as cash was doubted and therefore, the trial Court has dismissed the complaint and acquitted the accused.

6. The learned counsel for the appellant submitted that the Trial Court failed to consider the fact that the accused himself admitted that he had received a sum of Rs.5,00,000/- from the complainant and also not disputed the cheques and signature in the cheques. In these circumstances, the presumption under Section 139 of N.I.Act is applicable to the complainant.



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But, the Trial Court not considered the presumption in favour of the complainant and acquitted the accused. Hence, seeks to set aside the judgment of the Trial Court.

7. The learned counsel for the respondent/accused supported the judgment of the Trial Court and contended that the respondent/accused admitted his signature in the cheque and receiving of Rs.5 lakhs. But, he has disputed borrowal of Rs.45 lakhs from the complainant. Based on the evidence adduced by the parties, the Trial Court has rightly acquitted the accused. Hence he pleaded for dismissal of this appeal.

8. I have considered the submissions of the learned counsel and perused the materials on record.

9. On a perusal of the records, the fact reveals that the appellant is the complainant, who filed a complaint against the accused under Section 138 of Negotiable Instruments Act for dishonouring of cheques. Both cheques were



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given for repayment of Rs.45 lakhs received by the accused from the complainant. Only to discharge the debt amount, the cheques have been given by the accused. With this allegation, the complainant filed a complaint and let in evidence.

10. Further, on perusal of the evidence and records as well as the judgment of the Trial Court, the Trial Court in its judgment in paragraph 23 observed that the complainant during cross examination admitted that Rs.18 lakhs was given by way of cheque and remaining amount was paid by cash, but he failed to prove the alleged payment of Rs.18 lakhs through cheque. Apart from that, he has not adduced any satisfactory evidence for lending the loan of Rs.45,00,000/- to the accused, hence offence under Section 138 of Negotiable Instruments Act is not made out. In the said circumstances, the statutory presumption under Section 139 of Negotiable Instruments Act will not held fall to the appellant and therefore, there is no reason to interfere with the well considered order of the Trial Court.



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11. In such circumstances, I find no reason to interfere with the findings of the Trial Court. Hence, the Criminal Appeal is liable to be dismissed.

12. Accordingly, this *Criminal Appeal is dismissed*. The judgment passed by the learned Metropolitan Magistrate Fast Track Court No.I at Egmore, Allikulam, Chennai, in C.C.No.6531 of 2016 dated 29.12.2020 is confirmed.

24.01.2023

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To

The Metropolitan Magistrate Fast Track Court No.II, Egmore, Allikulam, Chennai.



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V.SIVAGNANAM, J.,

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