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Crl.A.No.639 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.639 of 2016

T.Kalaivanan

... Appellant

Versus

G.Loganathan

... Respondent

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment, dated 06.04.2015 made in C.C.No.61 of 2012 on the file of the Court of the learned Judicial Magistrate No.II, Walajapet, Vellore District acquitting the respondent / accused from the offence committed under Section 138 of N.I. Act.

For Appellant : Ms.S.Sri Ranjini
for Mr.T.P.Prabakaran

For Respondent : No Appearance

JUDGMENT

This appeal is filed against an order of acquittal. The appellant is complainant in a private complaint filed under Section 200 of the *Code of Criminal Procedure* complaining an offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as '*N.I. Act*').



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2. The case of the complainant is that the accused borrowed a sum of Rs.4,00,000/- and executed a promissory note agreeing to repay the same with interest at the rate of 24% per annum on 05.07.2011. On 24.07.2012, in discharge of the principal along with accrued interest, the accused issued a cheque for a sum of Rs.5,28,000/- which, upon presentation, returned with an endorsement 'insufficient funds'. Therefore, statutory notice was given and thereafter, since the accused failed to discharge the amount due under the cheque within 15 days period, the complaint was filed.

3. The Trial Court considered the fact that it is the case of the complainant that the accused executed a promissory note after borrowing a sum of Rs.4,00,000/- and no such promissory note was produced. Upon specific cross-examination, the complainant stated that when the accused issued the cheque, the promissory note was returned back. The Trial Court noticed that said fact was not mentioned in the complaint and this was the first ground, which the Trial Court held against the appellant.

4. Secondly, the case of the defence is that upon bouncing of the cheque, in order to repay the money, **Ex.D-2**, Power of Attorney, was executed and through **D.W.1**, the property was ultimately conveyed to the complainant. The



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sale deed was marked as **Ex.D-1**. Therefore, when a plausible defence was made by the accused by producing the defence witness, **D.W.1**, *Suresh* and marking **Exs.D-1** and **D-2**, the Trial Court held that the accused had rebutted the presumption under Section 139 of the *N.I. Act* and in the absence of any further proof of lending of the money, held that the accused is entitled for the benefit of doubt. Aggrieved by the same, the present appeal is filed.

5. Heard *Ms.S.Sri Ranjini*, learned Counsel appearing on behalf of the appellant. The learned Counsel for the appellant submits that when the cheque has been marked as **Ex.P-1** and when the signature in the cheque is admitted and **P.W.1** has categorically deposed before the Court, the presumption under Sections 118 as well as under 139 of the *N.I. Act* come to aid of the complainant and therefore, the Trial Court ought not to have acquitted the accused. She would further submit that even **D.W.1** did not categorically depose that only in respect of the present cheque amount, **Ex.D-1**, sale deed was executed and therefore, the acquittal on the said ground is also unsustainable.

6. I have considered the submissions made on behalf of the appellant and perused the material records of the case. It can be seen that it is the specific



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case of the complainant that the money was borrowed upon execution of the promissory note. As rightly found by the Trial Court, the complainant's version that he returned the promissory note without taking a copy thereof when the accused had issued the cheque is unbelievable. Secondly, as rightly found by the Trial Court, when the defence has marked **Ex.D-1** sale deed which clearly shows that the property was ultimately conveyed to the complainant and when the said fact has been duly put to the complainant and no proper explanation has been given in the cross-examination as to how the sale consideration passed on, the Trial Court's finding granting benefit of doubt to the respondent / accused cannot be faulted and cannot be said as an implausible view. In an appeal against acquittal, unless this Court comes to the conclusion that the view taken by the Trial Court is a impossible or perverse view, finding of acquittal cannot be turned as one of guilt.

7. Under these circumstances, the Criminal Appeal is dismissed as without any merits.

11.04.2023

Index : yes
Speaking order
Neutral Citation : no
grs



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To
The Judicial Magistrate No.II,
Walajapet,
Vellore District.

D.BHARATHA CHAKRAVARTHY. J.,
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