IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2023

PRONOUNCED ON: 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.332 of 2021

G.Murugan ... Appellant

Vs.

A.Bharath ... Respondent

PRAYER: This Criminal Appeal has been filed under Section 378 of Code of Criminal Procedure to set aside the order passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvannamalai, in S.T.C.No.2 of 2013 dated 10.03.2021.

For Appellant : Mr.J.Ashok

For Respondent : Mr.P.G.Thiyagu

JUDGMENT

Challenging the impugned order dated 10.03.2021 passed in S.T.C.No.2 of 2013 by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruvannamalai, the present criminal appeal has been filed.

2.The fact of the case is that the appellant is the complainant and the respondent is the accused in STC No.2 of 2013 on the file of the Judicial Magistrate, Fast Track Court, (Magisterial level), Thiruvannamalai. The respondent/accused borrowed a sum of Rs.2,06,000/- from the appellant/complainant for his family necessities. In a way to repay the above said debt, the accused issued a cheque bearing No.162911 dated 03.03.2012 in favour of the complainant for a sum of Rs.2,06,000/- drawn on ICICI bank, Tiruvannamalai. The complainant presented the cheque on 04.05.2012 for encashment but it was returned on the same day as funds insufficient. After issuing legal notice, since the amount remained unpaid, filed a complaint for the offence under Section 138 of the Negotiable Instrument Act.

3.Before the trial Court, the complainant examined himself as PW1 and marked seven documents as Ex.P1 to P7. The accused examined himself as DW1 and also examined one witness Deepak Raj Mummudi as DW2 and marked fourteen documents as Ex.R1 to R14.

4.On consideration of the evidence, the trial Court found the accused not guilty for the offence under Section 138 of N.I.Act and acquitted the accused. Aggrieved by this acquittal order, the complainant filed this criminal appeal.

5.The learned counsel for the appellant/complainant would submit that the acquittal order is against the evidence on record and against law. The trial Court failed to take into consideration the fact that the accused admitted the execution of the documents and handing over the cheque to the complainant and the trial Court failed to appreciate the evidence of the complainant and also failed to consider the admission of the signature in the cheque. Once the signature in the cheque is admitted and the same had been returned on account of insufficient funds, the offence under Section 138 of N.I.Act would clearly be held to have been made out and it was not open for the respondent/accused to urge that although the cheque had been dishonored, no offence under the Act is made out since the cheque was not given for repayment of the liability. The burden of proving the consideration for dishonor of the cheque is not on the complainant but the burden of proving that the cheque had not been issued for discharge of a lawful debt or liability is on the accused and if he fails to discharge such a burden, he is liable to be convicted for the offence under the Act. Further, contended that the accused failed to discharge the burden under Section 118 and 139 of N.I. Act that the cheque had not been issued towards discharge of a legal debt. The trial Court overlooked the law under Sections 118 and 139 N.I. Act and reiterated the other grounds raised in the grounds of appeal and thus pleaded to convict the accused for the offence under Section 138 of N.I.Act.

6.The learned counsel for the respondent /accused would submit that the accused is a milk vendor, thereby, knows the complainant. He borrowed a sum of Rs.1,00,000/- on 25.08.2011 and further, borrowed a sum of Rs.1,00,000/- on 02.09.2011, thus, totally, he borrowed a sum of Rs.2,00,000/- from the complainant. For that, he gave five promissory notes and five blank signed cheques. The cheques given by the accused bearing No.1629112 to 162915 and agreed to repay that amount with 15%

interest. While advancing the loan, the complainant received a sum of Rs.20,000/- as advance interest. The accused repaid the debt amount on 26.09.2011 paid Rs.7,500/-, on 07.10.2011 paid Rs.15,000/-, and on 06.12.2011 paid Rs.30,000/- and on 10.12.2011 paid Rs.20,000/- and on 05.01.2012 paid Rs.40,000/- and on 02.02.2012 paid Rs.20,000/- and on 08.02.2012 paid Rs.1,20,000/- and on 15.02.2012 paid Rs.20,000/- and on 28.02.2012 paid Rs.40,000/-, totally, he paid a sum of Rs.3,32,500/- as cash and Rs.9,814/- balance amount was adjusted for milk vending balance by the complainant. Totally, the accused paid a sum of Rs.3,42,314/-. Thereafter, the accused demanded the complainant to return the five blank signed pronotes and five blank signed cheques of ICICI Bank, Thiruvannamalai Branch, bearing cheque Nos.162911 to 162915 but the complainant not returned the cheques. Hence, on 19.04.2012, the accused gave a complaint to the Superintendent of Police, Thiruvannamalai. After enquiry by the police, the complainant agreed to hand over the blank pronotes and cheques but failed to return the same. Hence, the accused issued a legal notice on 03.05.2012 to the complainant. Immediately, after receiving the cheques, the complainant presented the same for collection and subsequently, filed the complaint. The cheques were not given to discharge any debt but given only as a security. In thse circumstances, after considering the evidence of the accused and the documents, the trial Court rightly found that the accused had discharged his burden by properly rebutting the legal presumption against the accused and established that the cheques were given merely by way of security and not issued towards any debt and it was issued by way of security alone which was unlawfully presented by the complainant. Therefore, the trial Court found the accused not guilty and there is no reason to interfere with the finding of the acquittal order and the criminal appeal has no merit and thus pleaded to dismiss the criminal appeal.

7. I have considered the matter in the light of the submissions made by the learned counsel for the appellant as well as the learned counsel for the respondent.

8.The substance of the complaint is that the accused borrowed a sum of Rs.2,06,000/- from the complainant to meet his family expenses and failed to repay that amount. By way of discharge that amount, the accused gave a cheque of ICICI bank, Thiruvannamalai branch bearing cheque No.162911 dated 03.03.2012 for Rs.2,06.000/-. According to the complainant, the cheque was given for discharging the loan amount received by the accused. The accused admitted receiving a loan amount of Rs.2,06,000/- but disputed the fact of issuing the cheque and contended that he had given five blank cheques and five pronotes as security for the loan amount. Further contended that he repaid the loan amount along with interest at Rs.3,32,500/- and also Rs.9,814/- was adjusted towards the price of the milk to the complainant. Thus, he paid a total amount of Rs.3,42,314/-. Since the complainant failed to repay the blank cheques and pronotes, he gave a complaint to the Superintendent Police, Thiruvannamalai on 19.04.2012. Thereafter, he had also issued a legal notice through his advocate on 03.05.2012 demanding to return the blank cheques, which is marked as Ex.R3 on the side of the accused. With regard to the amount of loan, other transaction and repayment, the trial Court elaborately discussed in the judgment para 14 to 21.

9.On a perusal of the evidence on record and the impugned judgment, it is noticed that the complainant during his cross examination admitted that the accused then and there paid interest of Rs.2,000/-, 3,000/- 5000/- which were noted down by the complainant. Thus he had noted particulars of amount received from the accused towards repayment of loan but he failed to exhibit his bonafide before the trial Court. The accused in his evidence clearly deposed about borrowing of amount of Rs.1,00,000/- on 25.08.2011 and another Rs.1,00,000/- on 02.09.2011, totally Rs.2,00,000/- he had received and also clearly deposed that the amount has been repaid and this was not rebutted by the complainant and had not specifically cross examined the accused in this aspect and did not draw any adverse evidence from the accused. Though the accused deposed that he had totally repaid Rs.3,42,314/- by way of repayment of loan amount with interest, the complainant did not specifically dispute the fact, while cross examining the accused.

10. Further, it is noticed that the accused issued notice on 03.05.2012 Ex.R3 demanding the complainant to return the blank cheques handed over by the accused to the complainant at the time of receiving the loan amount and also it is noted that the complainant presented the cheque on the next day on 04.05.2012 for collection. It probablised the accused defence that the cheque was given as a security for the purpose of obtaining loan and the cheque was not given for repayment of debt. It is discussed by the trial Court in the judgment para 23.

11.The presumption under Sections 118A and 139 N.I.Act are rebuttable and the standard of rule required to pass such rebuttal is preponderance of probability and not proof beyond reasonable doubt. In this case, the loan transaction is admitted but pleaded by the accused that the amount has been repaid and given details of repayment dates. Though the complainant admitted that the repayment was noted by him, he did not produce the note to rebut the claim of the accused. The claim of the accused that the cheque was given only as a security is thus probabilised and the version of the accused that the cheque was not returned to him.

Hence, he gave a police complaint as well as legal notice Ex.R3 also evidence the claim of the accused that he had given the cheque as a security . It is also noted that after receiving the demand of return of the cheque by the accused, the complainant presented the cheque for collection on the next day and the above circumstances cannot be easily rejected.

12.In the totality of the above circumstances, the trial Court is perfectly justified in its conclusion that the complainant failed to make out a case against the accused for the offence under Section 138 N.I.Act and in acquitting him of all the charges. I find no ground to interfere with the finding of the trial Court and no merits in the criminal appeal. Accordingly, the criminal appeal is dismissed.

Index: Yes/No **26.04.2023**
Internet:Yes/No
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To
1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Tiruvannamalai.
2.The Public Prosecutor
High Court, Madras.

V.SIVAGNANAM, J.

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Pre-delivery Judgement in Crl.A.No.332 of 2021

26.04.2023