IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A.No.818 of 2012

Smt.Amudha .. Appellant/ Complainant

.vs.

R.Anand ..Respondent/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, against the judgment of acquittal passed by the learned Judicial Magistrate No.II, Puducherry made in STR No.2990/2010, dated 02.04.2012.

For Appellant Mr.G.Saravanan

For Respondent Miss.J.Kasilda
Legal aid counsel

JUDGEMENT

This Criminal Appeal has been filed against the judgment and order passed by the learned Judicial Magistrate II, Puducherry in STR No.2990 of 2010, dated 02.04.2012, acquitting the respondent/accused from the offence u/s. 138 of the Negotiable Instruments Act, 1881.

2.When the matter was taken up for hearing on 08.03.2023, this Court passed the following order:

Pursuant to the earlier orders passed by this Court on 23.02.2023, a report has been filed by the Station House Officer, D Nagar police station, Puducherry. It is stated that all efforts are being made to find the whereabouts of the respondent and hence, some more time is sought for. The report is taken on file.

2. Miss.Kasilda.J, learned counsel is appointed as the Amicus curiae / legal aid counsel to appear on behalf of the respondent in this case. The learned counsel for the petitioner is directed to immediately serve all the papers on the counsel appointed by this Court to represent the respondent. Post this case under the caption "Adjourned cases" on 15.03.2023. In the meantime, the police shall make all efforts to find the whereabouts of the respondent and report before this Court.

3.Mr.V.Covindane, Sub Inspector of Police, Dhanvantri Police Station, Puducherry, was present before this Court and he produced the respondent/accused before this Court. The Police Officer stated that the respondent/accused had shifted his residence from Puducherry to Karaikudi and the police had to conduct an enquiry in order to find the whereabouts of the respondent and to produce him before this Court.

4.The respondent, who is present before this Court stated that he was not aware about the pendency of this criminal appeal since he had shifted his residence from Puducherry to Karaikudi in the year 2015 itself. The respondent further stated that his absence during the previous hearing and not taking steps to engage a counsel on his behalf, was not wanton and it was only due to the fact that he was not aware about the pendency of the criminal appeal. The respondent requested this Court to pardon him. The respondent also stated the legal aid counsel, who was appointed by this Court can argue on his behalf.

5.The petitioner/complainant filed the private complaint against the respondent on the ground that the respondent had borrowed a sum of Rs.10,000,00/- on 16.8.2009 to meet his family expenses and also for developing his business. For the said debt, he issued a cheque dated 24.12.2009 marked as Ex.P.1. When this cheque was presented for collection, the same was returned with an endorsement "insufficient funds". The return memos were marked as Ex.P-2 and Ex.P-3. The appellant thereafter issued legal notice dated 05.03.2010 (Ex.P-4) calling upon the respondent to pay the cheque amount within 15 days from the date of receipt of the legal notice. On receipt of the notice from the appellant, a reply notice was sent by the respondent dated 17.3.2010 (Ex.P.6). The respondent took a stand that the appellant is a pawnbroker and there were various transactions between the parties and a blank cheque which was given as a security, has been misused by the appellant. Thereby, the respondent had called upon the appellant to return back the cheque and denied the debt/liability claimed by the appellant. This resulted in the appellant filing a private complaint against the respondent for offence u/s. 138 of the Negotiable Instruments Act, 1881.

6.The appellant examined herself as PW-1 and marked Exs.P.1 to P.6. During the course of cross examination of PW.1, the respondent marked defence documents D1 to D.6.

7.The Trial Court on considering the facts and circumstances of the case and on appreciation of evidence, found that the respondent has rebutted the legal presumption under Section 139 of the Negotiable Instruments Act, 1881 and that the complainant/appellant came before the Court with a false case and accordingly, the respondent was acquitted and was set at liberty in terms of Section 255(1) Cr.PC. Aggrieved by the same, the present criminal appeal has been filed by the appellant.

8.Heard Mr.G.Saravanan, learned counsel for the appellant and Ms.J.Kasilda, legal aid counsel for the respondent.

9.Before going into the merits of the case, this Court must remind itself that this appeal has been filed against acquittal and it is trite law that the High Court cannot interfere with an order of acquittal unless there are compelling reasons and the High Court cannot interfere in an appeal just because there are two possible conclusions there are available in the given set of facts. This Court can exercise its appellate jurisdiction and interfere with the order of acquittal only in a case where there is an apparent error of law or a grave miscarriage of justice or the finding rendered by the Trial Court suffers from perversity.

10.In the present case, the appellant/complainant approached the Court as if, there was a solitary transaction between the appellant and the respondent and that the appellant had lent a sum of Rs.10,000,00/- to the respondent and the respondent had given the subject cheque towards this debt/liability. Even in the reply notice, the respondent had taken a very specific stand that the appellant is a pawnbroker and that he had pledged his jewels and had obtained various loans. The respondent also took a stand that on 16.08.2009, he had availed the loan of a sum of Rs.1,00,000/- and had issued a blank cheque which is the subject cheque in this case. It was further alleged in the reply notice that the personal loan taken by the respondent has been adjusted from the jewels that were pledged by the respondent and that the respondent was repeatedly asking the appellant to return back the cheques. Notice was also issued in this regard and inspite of the receipt of the same, the blank cheque was filled up and it was misused by the appellant.

11.In the light of this reply notice issued by the respondent, the Court below had rightly applied the legal presumption under Section 139 of the Negotiable Instruments Act, 1881 in favour of the appellant and had tested the stand taken during the cross examination of PW.1, to see if the respondent had rebutted the presumption through preponderance of probabilities.

12.The Trial Court on analyzing the evidence available on record had given the following reasons at paragraph no.22 of the order to come to a finding as to how the case that was projected by the appellant is totally unbelievable and for proper appreciation, the same is extracted hereunder:

> *22.The answers made by PW1/complainant, during her cross examination clearly establishes that her case and versions are totally unbelievable. Some of the examples are:*
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> *1.According to PW1, the accused availed a personal loan of Rs. 10,00,000/- even without giving any receipt, on 16.08.2009, stating that the money was needed for developing his business and for his ailing brother. As per Ex.D1/pawn ticket, he pledged 840 gms, of gold jewels on 17.08.2009 and borrowed a sum of Rs.13,46,000/- We have already discussed about the nature of Ex.D1/pawn ticket above. The PW1 has stated that on 16.08 2009 an amount of Rs.8.5 lakhs was paid from the savings kept in her house and remaining amount of Rs.1.5 lakhs was taken out from bank and paid in total a sum*

of Rs 10 lakhs. The PW1 has stated that on 17.08.2009 the amount of Rs.13,46,000/- was also paid from her personal savings. It on 17.08.2009, she possessed that much of amount in her personal savings then she could have paid the above said amount of Rs.1.5 lakhs from her personal savings itself on 16.08.2009. In such circumstances, when she was asked specifically about the above sum of Rs.1.5 lakhs, she has stated that he is not able to remember that from which bank and on which date the said amount of Rs 1.5 lakhs was taken out. If she had paid as stated by her, she could have stated atleast the bank name. But, she has not stated. The complainant, who is said to have paid a sum of Rs. 23,48,000/- in 2 days, not even produced any proof to show that she possessed such a huge amount. She is a licenced pawn broker and not an ordinary housewife. In such circumstances, this court deems that the non production of any of the record to show that she possessed as sum of Rs.10 lakhs on the alleged date of borrowal on 16.08.2009 is a fatal to her case. Further in respect of the above said amount of Rs.1.5 lakhs, she was specifically questioned on 21.07.2011 and again on 28.09.2011. But, she has stated again, even after 2 months, that she is not able to remember the bank name from which the said amount was taken out. If she actually paid as stated by her, within the above said period of 2 months, she could have verified and stated the bank name. But, failed to do that. It shows her statement is a false one

2) Further, the has stated that on 16.08.2009 she paid the amount of Rs 10 lakhs at her house and no one was present at that time including her husband and children. She has further stated that her children were gone to school. In fact, 16.08.2009 is a Sunday. The said fact shows the further falsehood of her statement. Further, according to her, she has *paid the said huge amount even without getting any receipt, that too even in the absence of any one. It is totally unbelievable.*

3) Further, it is the PW has stated that, the accused delivered the Ex.P1/cheque at her house, after her demands made at his office. But, in the Ex P4/Statutory we it has been mentioned that the Ex.P1/cheque was given to her on 24.12.2009, when she met the accused at his office. When the said fact was brought to her notice, she has turned again and stated that the cheque was given by the accused at his office by adding that since the accused did not repay the amount "within 3 months" as stated by him, she went and collected the cheque But, in fact in Ex.P4/notice, it has been mentioned that the accused had assured to repay the said amount "within a month". When this fact was brought to the notice, the PWI has turned again and stated that the accused assured to repay the said amount "within 10 days. Further, according to her, the accused assured her that the said amount will be repaid from the insurance amount of his brother, who met with an accident and taking treatment. The insurance money, which is expected to be received is not a certain one in respect of the quantum and the date of payment. The probability of getting insurance money may be positive or even negative also. In fact, admittedly, the PW1 is an LLC. agent. Hence, it cannot be stated that she don't know about the nature of the insurance money. expected to be received. Therefore, her statement that she paid an amount of Rs.10,00,000/- on the assurance of the accused that he will repay the amount within 10 days from the insurance money to be received, is also unbelievable.

13.This Court also carefully analyzed the evidence available on record.

This Court finds that there were two personal loans that were taken by the respondent from the appellant and this was also admitted by the appellant during the cross examination. While issuing the legal notice dated 9.2.2010, which was marked as Ex.D.4, the respondent had specifically called upon the appellant to return back the cheque which was issued by him since the amount that was received by the respondent has been adjusted from the jewels that were pledged by the respondent. There was no response for this legal notice issued by the respondent and the appellant had hurriedly filled up the blank cheque and used it for filing the present complaint. The appellant did not come before the Court with clean hands and by revealing the entire facts. The appellant projected a case as if there was a solitary transaction between the appellant and the respondent and she did not even reveal the fact that she was a pawnbroker. The answers that were elicited from PW.1 during the course of cross examination and the documents that were marked on the side of the defence during the cross examination, clearly rebuts the legal presumption and the burden of proof shifted to the appellant to establish the legally enforceable debt/liability. It is also found that the facts that were elicited during the cross examination also made the claim of the appellant totally improbable and unbelievable.

14.This Court finds that the trial Court had analyzed the evidence in detail and had rendered its findings and this Court does not find any perversity in those findings. In view of the same, there is no scope for the interference of the judgment and order passed by the Trial Court.

15.In the light of the above discussion, there are no grounds to interfere with the judgment and order passed by the Trial Court and this Court does not find any merits in this criminal appeal. Accordingly, the judgment and order passed by the Judicial Magistrate No.II, Puducherry in STR No.2990/2010, dated 02.04.2012, is hereby confirmed.

16.In the result, this Criminal Appeal stands dismissed.

15.03.2023

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

To

Judicial Magistrate No.II,
Puducherry.

N.ANAND VENKATESH,J.

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