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Crl.A.No.86 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2023

PRONOUNCED ON: 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.A.No.86 of 2023

Kanakala Satyanarayana

...

Appellant

Vs.

Vungarala Veera Venkata Subrahmanyam ...

Respondent

PRAYER: This Criminal Appeal has been filed under Section 378 of Code of Criminal Procedure to set aside the judgment dated 01.08.2022 passed by the Judicial Magistrate, Yanam in S.T.No.77 of 2016 and consequently, allow the complaint in S.T.C.No.77 of 2016 on the file of the Judicial Magistrate, Yanam.

For Appellant : Mr.L.Poovendra Perumal
for Mr.T.Sai Krishnan

For Respondent : M/s.Swarnam J.Rajagopalan



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JUDGMENT

Challenging the impugned order dated 01.08.2022 passed in S.T.No.77 of 2016 by the learned Judicial Magistrate, Yanam, the present criminal appeal has been filed.

2.The appellant is the complainant and the respondent is the accused in S.T.C.No.77 of 2016 on the file of the Judicial Magistrate Court, Yanam. The appellant/complainant filed a complaint against the respondent/accused for an offence under Section 138 of Negotiable Instruments Act. The accused borrowed a sum of Rs.10,00,000/- from the complainant on 27.04.2015. To repay that amount, he gave a cheque dated 30.03.2016 bearing cheque No.275923 for a sum of Rs.10,00,000/- drawn on Indian Bank, Yanam Branch. When it was presented for encashment, it was returned for “insufficient funds” in his account. After issuing legal notice, the complaint has been filed by the complainant.



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3.Before the trial Court, the complainant examined himself as PW1 and filed eight documents as Ex.P1 to Ex.P8. The accused examined three witnesses as DW1 to DW3 and filed three documents as Ex.D1 to Ex.D3.

4.After trial, the trial Court acquitted the accused on two grounds that there is a previous complaint dated 02.03.2014 between the complainant and the accused with regard to the money transaction and subsequent payment of Rs.10,00,000/- by the complainant is not believable one and another ground is the defence witness Mr.Durga Prasad (DW2), Manager of State Bank of Hyderabad, Muramulla Branch deposed that on 27.04.2015 the accused was present in Muramullla Branch of State Bank of Hyderabad and applied Demand Draft for his business purpose and it was also evidenced by Ex.D3. Under these circumstances, it was not possible that the accused received amount from the complainant on 27.04.2015 at 1.00 p.m. in the complainant's residence.



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5.The learned counsel for the appellant/complainant submitted that the trial Court has not properly considered the evidence adduced by the complainant and failed to consider the law in favour of the complainant under Section 139 of the Negotiable Instruments Act and it maintained the presumption of law that cheque duly drawn was in discharge of debt or liability. In this case, the accused had not denied his signature in the cheque. The presumption mandated by Section 139 of NI Act not properly rebutted. The complainant filed his bank statement of Account and the income tax returns to support his case but the trial Court has not considered them. The respondent is guilty of dishonour of cheque for the offence under Section 138 NI Act. Thus, pleaded to set aside the acquittal order passed by the trial Court and to punish the respondent/accused.

6.The learned counsel for the appellant/complainant, to support his argument, placed reliance upon the judgment of the Hon'ble Supreme Court in ***Bir Singh Vs. Mukesh Kumar*** reported in ***(2019) 4 Supreme Court Cases 197*** and ***Uttam Ram Vs. Devinder Singh Hudan and another*** reported in ***(2019) 10 Supreme Court Cases 287***.



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7.The learned counsel for the respondent/accused supported the judgment of the trial Court and submitted that the trial Court rightly considered the evidence adduced by the parties. In this case, the complainant specifically stated in his evidence and complaint that the amount has been lent on 27.04.2015 but on that date, the accused was at State Bank of Hyderabad, Muramulla Branch and not possible to meet the complainant and received the amount. Further, there is a dispute between the complainant and the accused earlier and in that regard, a criminal complaint has been given on 02.03.2014 and the matter was enquired by the Yanam Police. Under these circumstances, there was no possibility to lent a sum of Rs.10,00,000/- on 27.04.2015 to the accused. The accused properly rebutted the presumption under Sections 118 & 139 of NI Act. The trial Court rightly acquitted the accused/respondent on the ground of the offence was not proved. There is no valid ground for interfering with the acquittal order passed by the trial Court and thus, pleaded to dismiss the appeal.



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8.I have considered the matter in the light of the submissions made by the learned counsel for the appellant/complainant as well as the learned counsel for the respondent/accused.

9.On perusal of the records, it is seen that the complainant filed this appeal against the acquittal order passed by the trial Court. The complainant's case is that on 27.04.2015, the accused borrowed a sum of Rs.10,00,000/- from him in the presence of attestor and scribe and executed a promissory note on the same date and the accused agreed to repay that amount with compound interest at 18% per annum from the date of borrowing the amount. The promissory note is marked as Ex.P1. Further, the case of the complainant is that on 30.03.2016, the accused issued a cheque bearing No.275923 for a sum of Rs.10,00,000/- drawn on Indian Bank, Yanam towards part satisfaction of the abovesaid promissory note debt. The signature in the cheque Ex.P2 is not disputed by the accused person. The complainant before the trial Court examined himself as PW1 and filed the promissory note executed by the accused and the cheque



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given by the accused as Ex.P1 & Ex.P2 and along with the cheque return memo, legal notice, postal acknowledgment Card, statement of Accounts of complainant's bank account and Income tax return as Ex.P3 to Ex.P8. The respondent/accused not examined himself as witness but examined three witnesses namely, Katta Subba Raju (DW1), N.Durga Prasad (DW2) and Akula Gangadhara Rao (DW3) and also filed three documents with regard to the complaint before the Yanam police station dated 02.03.2014 and application forms filled before the bank for obtaining Demand Draft and wedding invitation. The accused was not disputed his signature in the cheque Ex.P2. Therefore, Section 139 creates a statutory presumption that a cheque received in the nature referred to under Section 138 of NI Act is always issued in discharge of debt or other liability. Therefore, it is not necessary for the complainant to specifically plead that the cheque, which was issued to him, dishonoured by the bank was in fact issued in discharge of a debt or liability. However, it is for the accused to show that the cheque was not issued in discharge of any debt or other liability. By reading Sections 138 & 139 of the Negotiable Instruments Act together it becomes



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WEB CO abundantly cleared that it is for the accused to show that the cheque issued by him and dishonoured by the Bank was not in discharge of any debt or liability.

10.To rebut the statutory presumptions, an accused is not expected to prove his defence beyond reasonable doubt, rather, something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist.

11.Coming to the fact of the case, though the complainant is to pay money through cheque to number of persons, he paid the cash of Rs.10,00,000/- to the accused which he got from the department payment



for doing contract works and paid that amount to the accused at his house at about 1.00 p.m. In this regard, his evidence runs as follows:

“ Though I used to pay money through cheque to number of persons, I had paid cash to the accused. I got Rs.10,00,000/- from the department payments for doing contract works and with that amount I paid the accused. I had shown this transaction in my Income Tax returns. I paid money to the accused at my house at about 01.00 p.m....”

12.In view of the above evidence, Ex.P7 statement of accounts of the complainant's bank account showing that the amount has been withdrawn by the accused from the bank on 27.04.2015 may be a false one. It may be for some other transaction but not for giving to the accused. Further, with regard to the payment of the amount of Rs.10,00,000/- to the accused at the complainant's house at 1.00 p.m. is also disproved by examining the witness Durga Prasad (DW2), Manager of State Bank of Hyderabad, Muramulla Branch. Durga Prasad (DW2) & Akula Gangadhara Rao (DW3)



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in their evidence deposed that the accused was in the bank on 27.04.2015.

The trial Court relied upon the evidence of Durga Prasad (DW2) & Akula Gangadhara Rao (DW3) and come to the conclusion that the accused satisfactorily rebutted the presumption raised under Section 139 of NI Act. The complainant failed to discharge his burden of payment of Rs.10,00,000/- to the accused on 27.04.2015. Admittedly, the complainant is doing banking business and he also admitted that he is to pay money through cheque to the borrowers. Under these circumstances, payment of cash of Rs.10,00,000/- to the accused on 27.04.2015 is disbelieved by the trial Court. Further, Katta Subba Raju,(DW1) Sub Inspector of Police deposed before the Court with regard to the money transaction between the complainant and the accused and there was a complaint before the Yanam police station and enquiry has been conducted on 02.03.2014. Under such circumstances, the complainant had paid a huge amount of Rs.10,00,000/- to the accused on 27.04.2015 was doubted by the trial Court. Therefore, I find no ground to take a different view of the evidence taken by the trial Court.



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Vs. State of Rajasthan reported in (2013) 5 SCC 655 held that while dealing with the appeal against the acquittals unless there are substantial and compelling reasons, good and sufficient grounds and very strong circumstances interference is not called for.

14. In this case, the complainant failed to discharge the initial burden cast upon him that he had advanced a loan of Rs.10,00,000/- to the accused. Therefore, the trial Court rightly acquitted the accused and dismissed the complaint. I find no reason to interfere with the findings of the trial Court and no merit in the criminal appeal. Accordingly, the criminal appeal is dismissed.

Index: Yes/No
Internet: Yes/No
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09.03.2023

To
The Judicial Magistrate, Yanam.



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V.SIVAGNANAM, J.

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Pre-delivery Judgement in
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