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CrI.A(MD)No.55 of 2014



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.A.(MD)No.55 of 2014

G.Selvaraj

... Appellant/Complainant

vs.

S.Murugan

... Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378 Cr.P.C., to call for the records and set aside the order passed by the Fast Track Judicial Magistrate Court, Srivilliputtur in S.T.C.No.84 of 2012, dated 20.09.2013.

For Appellant : Mr.M.Jothi Basu

For Respondent : Mr.P.T.Ramesh Raja

JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed in S.T.C.No.84 of 2012, by the learned Judicial Magistrate (Fast Track Court), Srivilliputtur, dated 20.09.2013.



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2.The crux of the complaint is that the respondent borrowed a sum of Rs.7 lakhs on 24.07.2012 and assured that he will repay the same within a period of two months. After two months, the appellant made repeated request for which, the respondent issued a cheque for a sum of Rs.7 lakhs. When the same was presented for collection, it was returned as dishonored for the reason “funds insufficient”. After causing statutory notice, the appellant lodged a complaint under Section 138 of N.I Act.

3.On the side of the appellant, two witnesses were examined as P.W.1 and P.W.2 and exhibited 6 documents as Ex.P.1 to Ex.P.6. On the side of the respondent, two witnesses were examined as D.W.1 and D.W. 2 and exhibited 4 documents as Ex.D.1 to Ex.D.4.

4.On perusal of the oral and documentary evidence, the trial Court found the respondent was not guilty and also dismissed the complaint. Aggrieved by the same, the present appeal has been filed by the appellant.

5.The appellant has raised grounds that the respondent categorically admitted his signature and issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section



183 of N.I Act. When the respondent failed to rebut the presumption arising out of Sections 118 and 139 of N.I Act, the trial Court ought to have convicted the respondent.

6.The case of the respondent is that the respondent and the father of the appellant are friends. On 08.05.2010, the alleged cheque for a sum of Rs.30,000/- and cellphone were stolen from his office. Therefore, he lodged a complaint before the Rajapalayam North Police Station and received a sum of Rs.30,000/- with the help of the Police. However, in support of the said contention, the respondent has failed to produce any material evidence. Therefore, he prayed to convict the respondent.

7.The learned counsel for the respondent would submit that the cheque was not issued for any legally enforceable debt. It was stolen by the appellant's father and as such, the respondent also lodged a complaint before the Police station. The said stolen cheque was presented for collection, after two years. In order to rebut the presumption, the respondent had examined D.W.1 and D.W.2. The Manager of the bank categorically deposed that the subsequent cheque was already honoured and as such, the said alleged cheque was not issued for any legally enforceable debt in favour of the appellant. Hence, the trial Court has



rightly acquitted the respondent and it does not warrant any interference by this Court.

8.Heard the learned counsel appearing on either side and perused the materials available on record.

9.On perusal of the records revealed that according to the appellant, the respondent borrowed a sum of Rs.7 lakhs on 24.07.2012. In order to repay the said amount, the respondent issued a cheque and the same was presented for collection. However, it was returned as dishonored for the reason “funds insufficient”. Hence, the appellant caused legal notice, which was marked as Ex.P.4. On receipt of the same, the respondent issued a reply notice, which was marked as Ex.P.6. The respondent had categorically rebutted the presumption that the said cheque was not issued any legally enforceable debt. He never borrowed any loan from the appellant. Further, the respondent had taken a specific stand that the appellant had no income and no source to lend such a huge amount of Rs.7 lakhs as loan. In order to substantiate the same, he examined P.W.1 and he deposed that he was only running a ironing shop and his income was only for Rs.2,000/- per month. That apart, when the appellant was lending a huge sum of Rs.7 lakhs, he would have received



some documents for security purpose. However, the appellant did not even receive any document as security, while lending the loan in favour of the respondent. That apart, the complaint lodged by the respondent in respect of the stolen of cheque, the appellant's father was enquired by the Inspector of Police, Rajapalayam North Police Station. The Manager of the bank was examined as D.W.2. He also categorically deposed that Ex.D.1 was duly honoured in favour of a third party issued by the respondent. However, Ex.P.3 was returned for the reason “insufficient funds”. It was presented after so many years, from the date of issuance, however, the subsequent cheques were duly honoured. It shows that the cheque was not issued for any legally enforceable debt. Therefore, the respondent categorically rebutted the presumption arising out of under Section 139 of the N.I. Act. Further, the appellant must prove the guilt of an accused beyond any reasonable doubt, standard of proof so as to prove a defence on the part of an accused is preponderance of 'probabilities'. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies.'

10. In the case on hand, the respondent rebutted the presumption, the entire burden is shifted on the shoulder of the appellant. However, the



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appellant has failed to produce any evidence to show that he had lend a sum Rs.7 lakhs as loan to the respondent. Therefore, the trial Court has rightly dismissed the complaint and acquitted the respondent. Hence, this Court finds no infirmity or illegality in the order passed by the trial Court and the appeal is liable to be dismissed.

11.Accordingly, the Criminal Appeal is dismissed.

27.04.2023

sjj

NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

- 1.The Judicial Magistrate,
Fast Track Court, Srivilliputtur.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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