BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.76 of 2014

N.Ashok ... Appellant/Complainant

Vs.

1.M/s.Ananda & Company,
200/5, Rajiv Street,
Sankarankovil Road,
Rajapalayam,
Virudhunagar District,
Represented by its Partner,
B.Gajendran.

2.B.Gajendran ... Respondents/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records and set aside the order passed by the learned Judicial Magistrate, Rajapalayam in S.T.C.No.3411 of 2011 on 16.12.2013 and allow this Criminal Appeal.

For Appellant : Mr.A.K.Azey Kumar Rahul
For Respondents : Mr.T.A.Ebinezer

JUDGMENT

This appeal has been preferred as against the Judgment passed in S.T.C.No.3411 of 2011 on the file of the learned Judicial Magistrate, Rajapalayam, dated 16.12.2013, thereby dismissing the complaint filed under Section 138 of the Negotiable Instruments Act and acquitted the respondents.

2. The appellant is the complainant and the respondents are the accused. The complaint lodged by the appellant against the respondents for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The crux of the complaint is that the respondents in order to develop their business borrowed a sum of Rs.6,50,000/- from the appellant in the month of April, 2010. They also assured to repay the said amount with interest at the rate of Rs.100/- per month. On demand, the respondents had issued a cheque for the said sum on 20.04.2011. It was presented for collection on 15.09.2011. However, it was returned for the reason that 'payment stopped by drawer'. After issuance of statutory notice, the appellant lodged the complaint.

4.On the side of the appellant, he himself was examined as P.W.1 and marked Exs.P.1 to P.7 and on the side of the respondents, they had examined D.W.1 and marked Exs.D.1 to D.3.

5.On perusal of the oral and documentary evidence, the trial Court found the respondents not guilty and acquitted them for the offence punishable under Section 138 of the Negotiable Instruments Act. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the appellant would submit that the respondents admitted their signature and also the issuance of cheque. Therefore, there is a legal presumption that the cheque was issued in order to enforce a legally enforceable debt or liability as contemplated under Section 139 of the Negotiable Instruments Act. However, the Court below dismissed the complaint on the ground that the cheque was presented for collection after 175 days from the date of issuance of the cheque. That apart, the said cheque was not issued for any legally enforceable debt. The appellant was an employee under the respondents and the respondents used to go abroad. Whenever the respondents go abroad, they used to hand over the cheques for the purpose of running the company. Therefore, the said cheque was not issued for any legally enforceable debt. Whereas the appellant proved that the cheque was issued for legally enforceable debt.

7.The learned counsel appearing for the appellant would further submit that in the reply notice, the appellant stated that he was employed in their company in the year 2009 and he stopped coming to office on 14.02.2011. The appellant paid the said sum and the same was honoured by the respondents. Therefore, there is no question of stealing the cheque and presented for collection. Both were business friends and as such, they borrowed an amount and in order to repay the said amount, the cheque was issued. Therefore, the trial Court ought not to have acquitted them and they are liable to be convicted.

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

9.On perusal of the records revealed that admittedly, the appellant was employed by the respondents. The statement of accounts, which was marked as Ex.P.2, revealed that on every occasion, the respondents issued cheques in favour of the appellant in order to run the company, whenever they visited abroad. All the cheques were duly honoured. That apart, the respondents also pledged jewels in the name of the appellant and when the respondents were ready with cash in order to redeem the jewels, the appellant also refused to receive the amount and refused to redeem the jewels. The appellant also admitted that he was employed under the respondents. When it was being so, there was absolutely no possibility for the respondents to borrow money from the appellant. Hence, the respondents categorically rebutted the presumption arising out of the provision under Section 139 of the Negotiable Instruments Act. In fact, after receipt of the statutory notice, the respondents issued a reply notice which was marked as Ex.P.6. It revealed the entire facts that they handed over the jewels that were pledged in the name of the appellant with Muthoot Finance at Rajapalayam. Thereafter, when the respondents were ready to redeem the jewels that were not agreed upon by the appellant herein. Therefore, the respondents issued a letter to their banker to stop payment of Ex.P.1. Further, revealed that they also were taking appropriate action to get back those cheques from the appellant.

10. It is also seen that the cheque was issued on 20.04.2011. Whereas it was presented only on 15.09.2011. There is absolutely no other evidence to show why it was presented after a

very long period from the date of issuance of the cheque. It shows that the cheque was not issued for any legally enforceable debt. Hence, the appellant failed to prove his case and the trial Court rightly acquitted the respondents and this Court finds no illegality or irregularity in the order passed by the Court below and the Criminal Appeal is dismissed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
ps

To

The Judicial Magistrate,
Rajapalayam.

G.K.ILANTHIRAIYAN, J.

ps

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