



Crl.R.C(MD)No.173 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.173 of 2015

C.Ramesh

... Petitioner/
Petitioner/Accused

Vs.

S.Sakthivel

... Respondent/
Respondent/ Complainant

PRAYER: Criminal Revision Case filed under Section 397 and Section 401 of the Code of Criminal Procedure, to call for the records and set aside the Judgment passed by the II Additional Sessions Judge, Thoothukudi, Thoothukudi District in C.A.No.106 of 2013, dated 20.01.2014, wherein confirmed the conviction of the Fast Track Court, Magistrate Level Thoothukudi, Thoothukudi District in C.C.No.112 of 2012, dated 04.11.2013.

For Petitioner : Mr.KA.Ramakrishnan

For Respondent : Mr.K.Suyambulinga Bharathi



Crl.R.C(MD)No.173 of 2015

ORDER

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This revision has been filed to set aside the Judgment passed in C.A.No.106 of 2013, dated 20.01.2014, on the file of the learned II Additional Sessions Judge, Thoothukudi, Thoothukudi District, wherein confirming the order passed in C.C.No.112 of 2012, dated 04.11.2013, on the file of the Fast Track Court, Magistrate Level Thoothukudi, Thoothukudi District.

2.The petitioner is an accused in the complaint lodged by the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the petitioner borrowed a sum of Rs.5,00,000/- from the respondent for repairing his house and also for his business developments. In order to repay the said amount, the petitioner issued a cheque for the sum of Rs. 5,00,000/- on 04.08.2009. It was presented for collection and the same was returned dishonoured for the reason "insufficient funds". Therefore, the respondent issued a statutory notice on 17.08.2009 and the same was duly received by the petitioner on 18.08.2009. On receipt of the same, the petitioner neither sent any reply nor



Crl.R.C(MD)No.173 of 2015

repay the cheque amount. Hence, the respondent filed the complaint.

4.On the side of the respondent, he himself was examined as P.W.1 and marked Ex.P.1 to P.6 and on the side of the petitioner, he himself was examined as D.W.1 and no documents were marked.

5.On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Simple Imprisonment and also directed him to pay compensation to the tune of the cheque amount, in default, to pay the compensation, the petitioner to undergo a further period of one month Simple Imprisonment. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.106 of 2013, dated 20.01.2014, on the file of the learned II Additional Sessions Judge, Thoothukudi, Thoothukudi District and the same was also dismissed confirming the conviction and sentence imposed by the trial Court.



Crl.R.C(MD)No.173 of 2015

6.The learned counsel appearing for the petitioner would submit that the cheque was not issued for any legally enforceable debt. Even according to the respondent, the petitioner borrowed a sum of Rs.5,00,000/- on 25.03.2005. Whereas the alleged cheque was issued on 04.08.2009. Therefore, it was time-barred debt and it was barred by limitation as the loan was not legally enforceable at the point of issuance of cheque. Originally, the petitioner was acquitted by the trial Court and aggrieved by the same, the respondent filed a petition in C.A(MD)No.166 of 2013 before this Court and this Court by order dated 01.07.2013, remanded the case to the trial Court to re-appreciate the evidence regarding the factor of bad debt and enforceability barred by limitation. However, the trial Court misconstrued the direction issued by this Court and mechanically convicted the petitioner without considering the ground of debt itself barred by limitation.

7.Per contra, the learned counsel appearing for the respondent would submit that the petitioner admitted his liability and issued cheque in order to repay the loan. While this Court remanded the matter back to the trial Court categorically concluded that if the debt has been received on 25.03.2005, the cheque can be issued by putting the date as 04.08.2009, while the accused has



Crl.R.C(MD)No.173 of 2015

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

10. According to the respondent, the petitioner borrowed a sum of Rs.5,00,000/- and agreed to pay interest at the rate of 12% per annum. In order to repay the principal amount, on 04.08.2009, he issued cheque in favour of the respondent. Till the issuance of the cheque, the petitioner paid interest towards the principal amount. The said cheque was presented for collection and the same was returned dishonoured for the reason "insufficient funds". Therefore, the respondent caused statutory notice. On perusal of the statutory notice, which was marked as Ex.P.3, revealed that the cheque was issued on 04.08.2009. The petitioner agreed to return the principal amount in the first week of August, 2009. Now, the points for consideration in this revision are:-

(i) Whether the cheque was issued for any legally enforceable debt?

(ii) Whether the debt is barred by limitation?



Crl.R.C(MD)No.173 of 2015

(iii) Whether the petitioner agreed to repay the principal amount in the first week of August, 2009 would amount to acknowledge the liability?

11.While remanding the matter for fresh trial in Crl.A(MD)No.166 of 2013, by order, dated 01.07.2013, this Court concluded that if the debt has been received on 25.03.2005, the cheque can be issued by putting the date 04.08.2009, while the accused has agreed to repay the amount on that date. Therefore, the debt has been due only on 04.08.2009. However, on perusal of statutory notice and complaint, nothing revealed that on the date of borrowal namely on 25.03.2005 itself, the petitioner had issued the cheque by putting the date as 04.08.2009. Though the respondent stated in the statutory notice as the petitioner agreed to repay the loan amount in the first week of August, 2009, nothing stated in the complaint that the petitioner agreed to repay the loan amount in the first week of August, 2009. However, the petitioner paid interest at the rate of 12% per annum on the loan borrowed by him in favour of the respondent. It is true that once issuance of cheque has been admitted or stands proved then a presumption arises in favour of the holder of the cheque that he had received the cheque of the nature referred to under Section 138 of the Negotiable Instruments



Crl.R.C(MD)No.173 of 2015

Act for discharge in whole or in part of a debt or any other liability.

It has to be seen whether there was a legal liability existing or not at the time of issuance of the cheque.

12.In this regard, the learned counsel appearing for the petitioner mainly relied upon the provision under Section 25 of the Indian Contract Act, 1879. It says that "Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law — An agreement made without consideration is void, unless— (1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits".



Crl.R.C(MD)No.173 of 2015

13.The respondent relied upon the provision under Section 25(3) of the Indian Contract Act, 1879. It says that “(i) it must refer to a debt which the creditor but for the period of limitation, might have enforced; (ii) there must be a distinct promise to pay wholly or in part such debt; and (iii) the promise must be in writing signed by the person or by his duly appointed agent”.

14.The provision under Section 25(3) of the Indian Contract Act, 1879, deals with time-barred debt. From a close reading of the said Section, it is made clear that with regard to payment of time-barred debt, there must be a distinct promise to pay either wholly or part of the same. Further, the promise must be in writing either signed by the person concerned or by his duly appointed agent. Thus, it is clear that unless a specific contract in the form of novation is created with regard to the payment of time-barred debt, Section 25(3) of the said Act cannot be invoked. A perusal of the Limitation Act looks into the vital distinction between “promise to pay and acknowledgement of debt”.



Crl.R.C(MD)No.173 of 2015

15.The distinction between an acknowledgement under Section 18 of the Limitation Act, 1963 and a promise within the meaning of Section 25(3) of the Contract Act, 1872 is of great importance. Both an acknowledgement and a promise are required to be in writing, and signed by the party or his agent. In the case on hand, even according to the respondent, the loan was advanced to the petitioner on 25.03.2005 and the cheque was issued in order to repay the said amount on 04.08.2009. Thus, by the time the cheque was issued, the debt was barred by limitation, since there was no valid acknowledgement of the liability within the period of limitation. It is also clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the dishonour of the cheque under Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge or wholly on the part of any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the express 'debt as liability' as a legally enforceable debt in other liability. It cannot be said that a time-barred debt is a legally enforceable debt. The accused cannot be convicted under Section 138 of the Negotiable Instruments Act, since the time-barred debt cannot be construed as a legally enforceable debt.



Crl.R.C(MD)No.173 of 2015

16. Further, for criminal liability to be made out under Section 138 of the Negotiable Instruments Act, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In the case on hand, as stated supra, the debt itself is barred by limitation on the date of issuance of the cheque. Therefore, there was no legally enforceable debt or other liability to attract the offence under Section 138 of the Negotiable Instruments Act. Even the payment of interest till the issuance of cheque, cannot amount to acknowledgement and liability. Both the acknowledgement and a promise are required to be in writing, signed by the party or his agent authorized on that behalf, and both have the effect of creating a fresh starting point of limitation. Further, it would extend the period of limitation since the cash payment was made. The cheque in question was issued in discharge of time-barred debt. It cannot be said that time-barred debt is a legally enforceable debt. Therefore, the accused cannot be convicted under Section 138 of the Negotiable Instruments Act on the ground that the debt was not legally recoverable.



Crl.R.C(MD)No.173 of 2015

17.In view of the above, this Court finds illegality and infirmity in the order passed by the Courts below. The conviction and sentence imposed by the Courts below are liable to be set aside.

18.Accordingly, the Criminal Revision Case is allowed and the Judgment passed in C.A.No.106 of 2013, dated 20.01.2014, on the file of the learned II Additional Sessions Judge, Thoothukudi, Thoothukudi District, confirming the order passed in C.C.No.112 of 2012, dated 04.11.2013, on the file of the Fast Track Court, Magistrate Level Thoothukudi, Thoothukudi District, are set aside. The petitioner/accused is acquitted. Bail bond if any executed by the petitioner/accused shall stand cancelled and a fine amount, if paid, is ordered to be refunded to the petitioner/accused forthwith.

21.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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Crl.R.C(MD)No.173 of 2015

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To

1.The II Additional Sessions Judge,
Thoothukudi,
Thoothukudi District.

2.The Fast Track Court,
Magistrate Level Thoothukudi,
Thoothukudi District.



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Crl.R.C(MD)No.173 of 2015

G.K.ILANTHIRAIYAN, J.

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Pre-Delivery Order made in
Crl.R.C(MD)No.173 of 2015

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