BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.200 of 2016

R.C.M.Ganesh Prabu ... Appellant/
Respondent/Complainant

Vs.

K.L.S.Shanmugam ... Respondent/
Appellant/Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C to call for the records in the Judgment made in C.A.No.3 of 2013, dated 22.04.2013 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, reversing the conviction and sentence made in C.C.No.118 of 2012, dated 12.12.2012 on the file of the Fast Track Court (Magisterial Level), Kovilpatti.

For Appellant : Mr.S.Ramasamy

For Respondent : No appearance

JUDGMENT

This appeal has been preferred as against the order of acquittal passed in C.A.No.3 of 2013, dated 22.04.2013 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, reversing the Judgment made in C.C.No.118 of 2012, dated 12.12.2012 on the file of the Fast Track Court (Magisterial Level), Kovilpatti, thereby convicted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act.

2.The appellant is the complainant and the respondent is the accused in the complaint lodged by the appellant for the offence under Section 138 of the Negotiable Instruments Act.

3.The crux of the complaint is that the respondent borrowed a sum of Rs.5,00,000/- from the appellant on 06.03.2011 by execution of a promissory note and he also agreed to repay the said amount with interest at the rate of 12% per annum. After repeated demand made by the appellant, the respondent issued a cheque for the said sum. It was presented for collection and the same was returned 'dishonoured' for the reason 'insufficient funds'. After causing statutory notice, the appellant filed the complaint.

4.On the side of the appellant, he himself was examined as P.W.1 and marked Ex.P.1 to Ex.P.6 and on the side of the respondent, no witness was examined and no document was marked.

5.On perusal of the oral and documentary evidence, the trial Court found the respondent guilty for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months Rigorous Imprisonment. Aggrieved by the same, the respondent preferred an appeal in C.A.No.3 of 2013, dated 22.04.2013 on the file of the learned I Additional District and Sessions Judge, Thoothukudi and the same was allowed and set aside the conviction and sentence imposed by the trial Court. Aggrieved by the same, the appellant preferred the present revision.

6.The learned counsel appearing for the appellant would submit that the appellant discharged his initial burden as contemplated under Section 138 of the Negotiable Instruments Act, and the trial Court rightly convicted the respondent. The respondent failed to rebut the presumption arising under provisions 118 and 139 of the Negotiable Instruments Act. Unfortunately, the Appellate Court reversed the findings on the ground that the appellant failed to produce the pro-note and failed to file any pro-note for recovery of money. That apart, the Appellate Court concluded that the said cheque was issued for security purposes. Therefore, the cheque was not issued for any legally enforceable debt. There was no evidence to show that the cheque was issued for security purposes. Even then, the Appellate Court itself presumed and set aside the conviction imposed on the respondent.

7.Though notice was served and the name of the respondent was printed in the cause list, none appeared for the respondent today, either in person or through pleader.

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

9.The respondent borrowed a loan of Rs.5,00,000/- from the appellant on 06.03.2011 by execution of pro-note thereby agreeing to repay the said amount with interest at the rate of 12% per annum. However, the respondent did not pay any interest and on-demand, the respondent issued the cheque. The respondent also admitted the signature found in the cheque and also the issuance of cheque. On receipt of the statutory notice, the respondent did not cause any reply notice in order to rebut the presumption. Once the signature on the cheque is admitted and the issuance of the cheque is also proved and it gives rise to a presumption in favour of the holder. The only contention raised by the respondent was that at the time of borrowal of loan to the tune of Rs.1,50,000/- in the year 2011, the cheque was issued for security purposes and also issued the blank promissory note. In order to substantiate the said contention, the respondent failed to produce any evidence either oral or documentary.

10.A mere suggestion made by the respondent during the cross-examination of the appellant would not amount to rebuttal of the presumption and shifted the burden on the appellant herein. The respondent further contended that the appellant failed to produce the pro-note which was allegedly executed at the time of borrowal of loan. The pro-note is only a supporting document, though it was not produced it is not fatal to the case of the appellant. Therefore, the trial Court rightly convicted the respondent for the offence punishable under Section 138 of the Negotiable Instruments Act. The Appellate Court reversed the finding only on the ground that the appellant failed to produce the pro-note in support of the cheque and the cheque was issued for the purpose of security. Further, concluded that the appellant admitted that Ex.P.1 was not issued for legally enforceable debt and the same was issued only as a security. On perusal of entire records nowhere and no records were found that the appellant admitted that the cheque was not issued for any legally enforceable debt and it was issued for security purposes. It is a sorry state of affairs that the Appellate Court itself recorded on assumption that the appellant admitted that the cheque was not issued for legally enforceable debt and it was issued for security purposes. Therefore, the respondent failed to rebut the presumption arising out of the provision under Sections 118 and 139 of the Negotiable Instruments Act by any oral or material evidence. Therefore, the respondent is liable to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act.

11.Accordingly, the Criminal Revision Case is allowed and the Judgment made in C.A.No.3 of 2013, dated 22.04.2013 on the file of the learned I Additional District and Sessions Judge, Thoothukudi is set aside, confirming the Judgment made in C.C.No.118 of 2012, dated 12.12.2012 on the file of the Fast Track Court (Magisterial Level), Kovilpatti. The trial Court is directed to take appropriate steps to secure the petitioner in order to serve the remaining period of sentence.

20.04.2023

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

To

1.The I Additional District and Sessions Court,
Thoothukudi.

2.The Fast Track Court (Magisterial Level),
Kovilpatti.

G.K.ILANTHIRAIYAN, J.

ps

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