



Crl.A.(MD).No.81 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 20.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.81 of 2022

A.Gomathi

... Appellant/Complainant

Vs.

S.Pauldavid

... Respondent /petitioner

PRAYER : Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to call for the records of the case in C.C.No.17 of 2016 on the file of the learned Fast Track Court (Magistrate Level), Kovilpatti, Thoothukudi District and set aside the order of acquittal dated 25.10.2021 passed therein.

For Appellant : Mr.M.Prabu

For Respondent : Mr.S.Saravanan



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JUDGMENT

This Criminal Appeal has been filed to set aside the order of acquittal dated 25.10.2021, passed in C.C.No.17 of 2016 by the learned Fast Track Court (Magistrate Level), Kovilpatti, Thoothukudi District.

2.The appellant is the complainant in C.C.No.17 of 2016, who filed the complaint under Section 138 of Negotiable Instruments Act, (hereinafter, for the sake of brevity, referred to as “NI Act”) before the learned Fast Track Court (Magistrate Level), Kovilpatti, Thoothukudi District, with the allegations that on 14.12.2012, the respondent borrowed a sum of Rs.5,20,000/-. The same was handed over in the presence of One Shanthi and also husband of the complainant. Subsequently, the respondent has not made any repayment. Hence, to discharge the said debt, he issued a cheque bearing No.755411, dated 15.07.2015, drawn on State Bank of India, Kovilpatti, on 30.04.2015. The appellant presented the said cheque before her Banker namely, State Bank of India, Kovilpatti, on 15.07.2015 and the same was returned with an endorsement of “Funds Insufficient”. Therefore, the appellant issued a statutory notice on 20.07.2015. Thereafter,

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on 29.08.2015, the appellant had issued a Rejoinder Notice. After receipt of the notice, there was no response from the respondent. Hence, the appellant filed a complaint under Section 138 of NI Act, and the same was taken on file in C.C.No.17 of 2016 by the learned Fast Track Court (Magistrate Level), Kovilpatti, Thoothukudi District.

3. Thereafter, on receipt of the summons, the respondent appeared and contested the case. To prove the case, the complainant examined 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 two documents as Ex.D1 and Ex.D2 were marked. Two documents namely Ex.C1 and Ex.C2 have also been marked as Court documents.

4. The learned trial Judge, on considering the evidence of witnesses and documents acquitted the respondent on the ground that no evidence was adduced on the side of the appellant to prove the debt amount and no evidence was also produced to show the means of the appellant and no evidence was adduced on the side of the appellant to prove the



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transaction between the appellant and the respondent. The learned trial Judge, considered the evidence of defence side witness D.W.2, who is the relative of the respondent and close to the appellant. She deposed that the respondent borrowed only a sum of Rs.2,00,000/- through D.W.2 and the respondent repaid the same.

5.Considering the above circumstances, the learned trial Judge acquitted the respondent holding that the cheque was not issued as alleged by the appellant. Challenging the said judgment, the appellant filed this appeal.

6.The learned counsel appearing for the appellant/complainant submitted that the respondent had admitted the issuance of cheque as well as the signature in the cheque. Hence, the presumption under Section 139 of NI Act comes into play. The presumption is relating to the legally enforceable debt and also to the amount mentioned in the cheque. As per the following judgment of the Honourable Supreme Court:

1.In the case of ***Rangappa Vs.***



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Srimohan reported in ***AIR 2010 SC 1898***.

2.In the case of ***Aps Forex Services Private Limited Vs. Shakthi International Fashion Linkers and others*** reported in ***2020 SAR (Cri) 614***.

3.In the case of ***Bir Singh Vs. Mukesh Kumar*** reported in ***AIR 2019 SC 2446***.

the legal presumption was considered by the Supreme Court. When there was no dispute regarding the signature in the cheque, the legal presumption arises and the learned trial Judge erroneously acquitted the accused.

6.1.The learned counsel for the appellant further submitted that there was a complaint pending in Crime No.223 of 2015, before the Police officer. During the course of enquiry, it is admitted that the respondent agreed to pay the remaining of Rs.1,00,000/-. From the above fact, it is clear that there was some transaction between the parties. According to the appellant, a sum of Rs.5 lakhs was given and according to the respondent only Rs.2 lakhs was given. In view of the above statutory presumption, this Court is duty bound to take the consideration as Rs.5 lakhs. In the said circumstances, he seeks to set aside the acquittal judgment passed by the



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Court below and convict the respondent under Section 138 of NI Act, in accordance with law.

7.The learned counsel appearing for the respondent submitted that the issuance of the cheque itself is questionable one. There is no evidence on behalf of the appellant to prove the issuance of cheque. The Honourable Supreme Court in number of Judgments held that unless the issuance of cheque is proved, the presumption could not be raised. He further submitted that in this case there is no evidence to prove the means of the appellant. D.W.2 is the relative of the appellant and she specifically deposed that the respondent borrowed only a sum of Rs.2 lakhs from the appellant and the same was repaid. In the said circumstances, the evidence of D.W.2 was appreciated by the learned trial judge for acquitting the appellant.

7.1.Further, the learned trial judge upon considering the evidence held that he believed the evidence of the D.W.2 and disbelieved the version of the appellant that the cheque was issued by the respondent. In the case of appeal against acquittal, the above facts need not be interfered unless there



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is perversity in the finding of the learned trial Judge. As per the Judgment of the Honourable Supreme Court, when the finding of the learned trial Judge is probable one, this Court has no jurisdiction to interfere in a case of appeal against acquittal.

8. This Court considered the rival submission and also perused the records and impugned judgment passed by the learned trial Judge and precedents relied upon by the appellant.

9. While dealing with the appeal against the acquittal, this Court is required to bear in mind the guidelines issued by the Hon'ble Supreme Court in the following judgments:

(i) In ***Chandrappa v. State of Karnataka***, reported in ***(2007) 4 SCC 415 at page 432***

42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:



(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he



is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

(ii) In Murugesan v. State, reported in (2012) 10 SCC 383 at page 397

32. In the above facts can it be said that the view taken by the trial court is not a possible view? If the answer is in the affirmative, the jurisdiction of the High Court to interfere with the acquittal of the appellant-accused, on the principles of law referred to earlier, ought not to have been exercised. In other words, the reversal of the acquittal could have been made by the High Court only if the conclusions recorded by the learned trial court did not reflect a possible view. It must be emphasised that the inhibition to interfere must be perceived only in a situation where the view taken by the trial court is not a possible view. The use of the expression “possible view” is conscious and not without good reasons. The said expression is in



contradistinction to expressions such as “erroneous view” or “wrong view” which, at first blush, may seem to convey a similar meaning though a fine and subtle difference would be clearly discernible.

33. The expressions “erroneous”, “wrong” and “possible” are defined in Oxford English Dictionary in the following terms:

“erroneous.— wrong; incorrect.

wrong.—(1) not correct or true, mistaken.

(2) unjust, dishonest, or immoral.

possible.—(1) capable of existing, happening, or being achieved.

(2) that may exist or happen, but that is not certain or probable.”

34. It will be necessary for us to emphasise that a possible view denotes an opinion which can exist or be formed irrespective of the correctness or otherwise of such an opinion. A view taken by a court lower in the hierarchical structure may be termed as erroneous or wrong by a superior court upon a mere disagreement. But such a conclusion of the higher court would not take the view rendered by the subordinate court outside the arena of a possible view. The correctness or otherwise of any conclusion reached by a court has to be tested on



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the basis of what the superior judicial authority perceives to be the correct conclusion. A possible view, on the other hand, denotes a conclusion which can reasonably be arrived at regardless of the fact where it is agreed upon or not by the higher court. The fundamental distinction between the two situations have to be kept in mind. So long as the view taken by the trial court can be reasonably formed, regardless of whether the High Court agrees with the same or not, the view taken by the trial court cannot be interdicted and that of the High Court supplanted over and above the view of the trial court.

(iii) In Jafarudheen v. State of Kerala,
reported in **(2022) 8 SCC 440 at page 454**

25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of



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the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

10.From the above guidelines issued by the Supreme Court, this Court finds no perversity in the following finding of the learned trial Judge :

1.The learned trial judge gave categorically finding that on the basis of the D.W. 1 evidence that the cheque was not issued as pleaded by the appellant.

2.Further, the appellant also not produced any evidence to show that cheque was issued on 15.07.2015. The learned trial judge also correctly appreciated the fact that the appellant could prove any means.

3.When the respondent disputed the means in the circumstances pleaded by him, it is the duty of the appellant to prove the means to pay the amount.



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4.Further, as rightly pointed out by respondent's counsel that under 138 of the NI Act presumption comes only in the event of the foundational facts were proved by the appellant. In this case, the foundational facts that the issuance of cheque is not proved and hence, the learned trial judge correctly has come to the conclusion that the case of the appellant is not accepted.

11.In the said circumstances, this court finds no merits in the appeal against acquittal. Hence, the impugned order passed in C.C.No.17 of 2016, dated 25.10.2021, by the learned Fast Track Court (Magistrate Level), Kovilpatti, Thoothukudi District, is confirmed.

12.Accordingly, this Criminal Appeal is dismissed.

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NCC :Yes/No
Index :Yes/No
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To:

- 1.The Fast Track Court (Magistrate Level),
Kovilpatti, Thoothukudi District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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