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CRL.A.(MD).No.205 of 2013



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2023

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.205 of 2013

M.Ramamurthy ... Appellant/Complainant

Vs.

K.Kriubakaran ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C to set aside the Judgment of acquittal passed by the learned Judicial Magistrate/Fast Track Court, Sivagangai in C.C.No.169 of 2012 dated 12.03.2013 and to convict the respondent.

For Appellant : Mr.A.K.Hemaraj

For Respondent : Mr.C.K.M.Appaji

JUDGMENT

This appeal has been preferred as against the order of acquittal passed in C.C.No.169 of 2012 dated 12.03.2013 on the file of the learned Magistrate/Fast Track Court, Sivagangai.

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



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3. The crux of the complaint is that on 20.09.2006, the respondent borrowed a sum of Rs.5,00,000/- from the appellant for his family and other expenses. On the date of borrowal itself, the respondent issued post-dated cheque. On instructions, it was presented for collection on 27.11.2006. However, it was returned as dishonoured for the reason 'Funds Insufficient'. After causing statutory notice, the appellant lodged complaint.

4. On the side of the appellant, he himself was examined P.W.1 and marked Ex.P.1 to Ex.P.6. On the side of the respondent, he himself was examined D.W.1 and had also examined D.W.2 and D.W.3 and marked Ex.D.1 and Ex.D.2.

5. On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to 'NI Act' for brevity) and acquitted him and dismissed the complaint. Aggrieved by the same, the present Appeal.

6. The learned counsel for the appellant would submit that the complaint was lodged in time. The learned trial Court received the



complaint and signed in all the documents. Mere non-payment of Court fee would not amount to bar by limitation. Further, the trial Court acquitted the respondent on the ground that the respondent repaid the loan amount, which was borrowed by him, through Ex.D.1 and D.2. It was categorically denied by the appellant. When it was being so, the respondent ought to have proved the same in the manner known to law. The respondent admitted his signature and also issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the NI Act. It is also settled law that in order to rebut the presumption arising out of Section 139 of NI Act, the respondent failed to rebut the same by any evidence. In fact, after receipt of the statutory notice, in order to rebut the presumption, the respondent failed to issue any reply notice. Therefore, the trial Court ought not to have acquitted the respondent.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

8. A perusal of the records revealed that the appellant lodged a complaint for the offence punishable under Section 138 of NI Act.



According to him, the respondent borrowed a sum of Rs.5,00,000/- as hand loan and on the date of borrowal itself, he issued post-dated cheque.

On instructions, it was presented for collection and the same was returned for the reason 'Insufficient Funds'. The cheque was marked as Ex.P.1. After causing statutory notice, the appellant lodged complaint. The appellant discharged his initial burden as contemplated under Section 138 of NI Act. On the side of the respondent, he had examined D.W.1 to D.W.3 and marked Ex.D.1 and Ex.D.2 in order to rebut the presumption arising out of provision under Section 139 of NI Act. It is also seen that except the cheque, no other document was received by the appellant as security. After returning of the cheque, the statutory notice was issued on 06.01.2007 and the same was received by the respondent on 08.01.2007. The cause of action to file complaint arose from 24.01.2007 namely after 15 days from the date of receipt of the notice. According to the appellant, the complaint was lodged on 19.02.2007. However, it was filed without any Court fees and stamp papers on 19.06.2007. Sworn statement was recorded only thereafter namely on 08.02.2008. Therefore, the complaint was not filed within the time. That apart, in order to rebut the presumption, the respondent marked Ex.D.1 and Ex.D.2. It clearly shows that the respondent borrowed loan on two occasions. In the first occasion, he borrowed a sum of Rs.3 Lakhs and in



the second occasion, he borrowed a sum of Rs.2,40,000/-. The said amount along with interest was duly repaid by him and in order to prove the same, he produced Ex.D.1 and Ex.D.2. However, the appellant failed to return the cheque, which was obtained as security. Therefore, the respondent clearly rebutted the presumption and as such, the burden of proof was shifted on the shoulder of the appellant. Even then, the appellant except Ex.P.1, no other document was produced in order to prove that the cheque was issued for legally enforceable debt.

9. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court of India reported in **2021(2) CTC 357** in the case of **Kalaimani textile and others Vs., P.Balasubramanian**, in which, the Hon'ble Supreme Court held that presumptions raised under Sections 118 and 139 of NI Act are rebuttable in nature. A probable defence needs to be raised, which must meet the standard of “preponderance of probability”, and not mere possibility . A bare denial of passing of consideration would not aid the case of accused. Once signature and issuance of cheque is admitted, it would attract presumption under Section 139 of NI Act. In the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt, whereas in the case on hand by Ex.D1 and Ex.D.2, the respondent



categorically rebutted the presumption by preponderance of probability.

Therefore, the Judgment cited by the learned counsel appearing for the appellant is not helpful to the case on hand. Hence, the trial Court rightly acquitted the respondent and dismissed the complaint. This Court finds no illegality or infirmity in the order passed by the learned Judicial Magistrate/Fast Track Court, Sivagangai, in C.C.No.169 of 2012 dated 12.03.2013.

10. Accordingly, this Criminal Appeal stands dismissed.

12.04.2023

NCC : Yes/No
Index : Yes/No
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To

1.The Judicial Magistrate/Fast Track Court, Sivagangai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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