BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.230 of 2011

T.Sukumar ... Appellant/Complainant

vs.

S.Bhaskar ...Respondent/Accused

PRAYER : This Criminal Appeal has been filed under Section 378(4) Cr.P.C., to call for the records from the lower Court (Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District) and to set aside the Judgment of the lower Court by convicting the accused in C.C.No.3500 of 2010, dated 11.07.2011.

For Appellant : Mr.K.Jeyakumar
for Mr.K.Prabhu

For Respondent : Mr.C.M.Arumugam
for Mr.M.Thirunavukkarasu

JUDGMENT

This Criminal Appeal is filed against the order passed in C.C.No. 3500 of 2010, on the file of the learned Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District, dated 11.07.2011.

2.The appellant is the complainant and the respondent is the accused in the complaint lodged by the appellant.

3.The crux of the complaint is that on 01.08.2007, the respondent borrowed a sum of Rs.3,40,000/- for his family expenses and he also assured that he will repay the said amount within one month. When the appellant made demand, the respondent issued two cheques, one for a sum of Rs.2,00,000/- on 01.09.2007 and another for a sum of Rs. 1,40,000/- on 10.09.2007. Both the cheques were presented for collection on 12.09.2007 and it was returned as dishonored for the reason that "funds insufficient". After causing a statutory notice, the appellant lodged the said complaint.

4.On the side of the appellant, he examined himself as P.W.1 and exhibited 9 documents as Ex.P.1 to Ex.P.9. On the side of the respondent, 3 witnesses were examined as D.W.1 to D.W.3 and exhibited 14 documents as Ex.D.1 to Ex.D.14.

5.On perusal of the oral and documentary evidence, the trial Court found that the respondent was not guilty for the offence under Section

138 of the N.I Act and acquitted him from the charges. Aggrieved by the same, the present appeal has been filed.

6.The learned counsel for the appellant would submit that the respondent admitted his signature and issuance of cheque. Therefore, the appellant discharged his initial burden as contemplated under Section 138 of the N.I Act. At the same time, the respondent has failed to rebut the presumption arising under Sections 118 and 139 of N.I Act. Though the respondent issued a stop payment on the cheques, which were issued by him in favour of the appellant, both the cheques were returned as dishonored for the reason "funds insufficient". Even then, the specific case of the respondent is that the cheques were stolen by the appellant's father-in-law, however, the respondent has failed to prove the same by producing material evidence such as complaint or any steps to register any case for stolen of cheque. The respondent also fabricated Ex.D.10 and Ex.D.11 in order to escape from the clutches of criminal prosecution. However, the trial Court had failed to consider the same and had mechanically acquitted the respondent. The appellant examined D.W.2 is the bank, he categorically deposed that there was no acknowledgement for the receipt of the stop payment, as if it was issued by the respondent, dated 24.08.2007 in respect of Ex.P.1 and Ex.P.2. However, the bank manager received stop payment letter and even then failed to as both the cheques were returned dishonored for the reason "funds insufficient" hence, he prayed for convicting the respondent for the offence under Section 138 of N.I Act.

7.Per contra, the learned counsel for the respondent would submit that the respondent had categorically rebutted the presumption arising out of under Section 139 of N.I Act. In fact, the father-in-law of the appellant was an employee under the respondent, while he was in employment, he had stolen away Ex.P.1 and Ex.P.2 and filled in the name of his son-in-law, namely, the appellant and the same was presented in order to extract money from the respondent. That apart, the father-in-law of the appellant was examined as D.W.3. He had categorically admitted that Ex.D.10 and Ex.D.11, which were executed by him. Ex.D.10 and Ex.D.11 would reveal that what are the amount that was borrowed from D.W.3 was rebutted promptly. In fact, on the strength of the said documents, the suit filed by D.W.3 as against the respondent, was dismissed by the trial Court. However, the Appellate Court hold and its pending second appeal before this Court in respect of mortgage. He would further submit that on 07.09.2007 itself, the respondent had caused notice to the appellant and D.W.3, in which, categorically stated the entire case that the respondent borrowed a sum of Rs.3,00,000/- on 10.01.2007 by mortgaging the property owned by the respondent/accused. The respondent also paid the interest promptly till 10.08.2007. However, the appellant and D.W.3 threatened the respondent in order to spoil his business. Therefore, the respondent issued cheques on 01.09.2007 and 10.09.2007. After receipt of the statutory notice, dated 14.09.2007, the respondent issued a reply notice on 26.09.2007 and categorically denied the issuance of cheques and also mentioned about the issuance of stop payment to his banker in respect of Ex.D.1 and Ex.D.2. Therefore, the respondent categorically rebutted the presumption and as such, the trial Court rightly dismissed the complaint.

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

9.The case of the appellant is that the respondent borrowed a sum of Rs.3,40,000/- as hand loan. In order to repay the said amount, the respondent issued two cheques, dated 01.09.2007 and 10.09.2007. Both the cheques were presented for collection and the same were returned dishonored for the reason that "funds insufficient". After causing statutory notice, the appellant lodged the said complaint. The specific case of the respondent is that he never borrowed any amount and both the cheques were not issued for legally enforceable debt in favour of the appellant. In fact, the father-in-law of the appellant was an employee under the respondent and he had stolen those documents and filled in the name of the appellant in order to extract money from him. It is also seen that the respondent borrowed a sum of Rs.3,00,000/- from the appellant's father-in-law, who was examined as D.W.3 and on mortgage, the respondent also promptly paid interest. However, the respondent was threatened by the appellant and D.W.3. Therefore, the respondent caused a notice on 07.09.2007 to the appellant and D.W.3. On receipt of the same, the appellant did not sent any reply notice. That apart, the respondent marked Ex.D.10 and Ex.D.11 and on a perusal of those documents would reveal that D.W.3 had executed in favour of the respondent. He categorically admitted that he taking steps to withdraw the said complaint. Further, he also acknowledged that the respondent had availed a sum of Rs.3,24,000/- for the loan obtained by him and settled the entire loan amount. That apart, on receipt of the statutory notice, the respondent also issued a reply notice, which was marked as Ex.D.8. On perusal of the reply notice, the respondent issued stop payment letter to the banker on 24.08.2008. The banker was examined as D.W.2 and he also categorically admitted that the stop payment letter was issued by the banker. Therefore, the respondent clearly rebutted the presumption arising out of provision under Sections 118 and 139 of N.I Act. Further, D.W.3 had filed a suit for mortgage and the same was dismissed on the strength of Ex.D.10 and Ex.D.11. However, the appellate Court allowed and is challenged before this Court by way of second appeal and is pending. It is also seen that the first cheque was issued on 01.09.2007 and the second cheque was issued on 10.09.2007, however, the appellant failed to present the same immediately on receipt of the first cheque, on the date of borrowal of alleged cheque to the tune of Rs.3,40,000/- and other document was received for any security purpose. Though between the appellant and the respondent, there was no money transaction, the appellant did not receive any security documents at the time of lending money to the tune of Rs.3,40,000/-. Therefore, the trial Court has rightly dismissed the complaint. Hence, this Court finds no infirmity or illegality in the order passed by the Court below and the appeal is liable to be dismissed.

10.Accordingly, the Criminal Appeal stands dismissed.

19.04.2023

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

1.The Judicial Magistrate No.II, Srivilliputhur, Virudhunagar District.

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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.K.ILANTHIRAIYAN , J.

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