BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/01/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.RC(MD)No.43 of 2020

Deepalakshmi
W/o.Rajaganesan,
rep. Through her Power Agent
Jayakumar : Petitioner/Appellant/Complainant

Vs.

Kannaiya : Respondent/Respondent/Accused

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the judgment, dated 07/09/2019 in CA No.49 of 2018 on the file of the Principal District Judge, Dindigul, confirming the judgment, dated 04/06/2018 in CC No.1 of 2016 on the file of the Judicial Magistrate No.II, Dindigul and set aside the same and pass such further or other order.

For Petitioner : Mr.B.Janarth Kumar @ Janath Ahmed

For Respondent : Mr.G.Gomathisankar

O R D E R

This criminal revision has been filed in order to set aside the judgment, dated 07/09/2019 passed in CA No.49 of 2018 by the Principal District Judge, Dindigul, confirming the judgment, dated 04/06/2018 passed in CC No.1 of 2016 by the Judicial Magistrate No.II, Dindigul.

2.**The facts in brief**:-

The father of the complainant namely Jayaraman mortgaged his property with Lakshmi Vilas Bank, Dindigul. He was unable to repay the debt. So he wanted to sell his property and discharge the liability. On that basis, he entered into an agreement with the accused for Rs.25,000/-. Similarly, he has also sold some other plots, but the above said loan could not be discharged. One time settlement was arrived for Rs.7,75,000/-. When that was enquired with the accused, he requested her father to pay the debts and promised to pay the same in due time. So on that basis, the above said liability was also discharged by her father. When that was demanded back, the accused refused. Later, promised to pay the same through cheque. He also issued a cheque, dated 10/06/2015 in favour of the complainant. That was presented for payment, on 25/08/2015. But it was returned due to insufficient funds. After completing the statutory formalities, the complaint is filed.

3.Before the trial court, it was contended by the accused to the effect that there was no legally enforceable liability between the complainant and himself and the evidence of the complaint is also contradictory in nature.

4.On the basis of the available records. the accused was acquitted by the trial court on the ground that the prosecution failed to prove the legally enforceable liability. Against which, appeal has been preferred before the Principal District Judge, Dindigul, in Crl.A No.49 of 2018 and that came to be dismissed, on 07/09/2019.

5.Against the concurrent findings of the trial court as well as the appellate court, this criminal revision has been preferred by the complainant.

6.Heard both sides.

7.The learned counsel appearing for the petitioner would submit that the above said cheque was issued towards discharging the liability, that was incurred by the accused in discharging the liability that was due to the Bank to be paid by the complainant's father, on the basis of the mortgage of a property, which was sold to the accused. It is further submitted that when the accused has admitted the signature, naturally presumption under section 139 of the Negotiable Instruments Act comes into play, but the trial court has omitted to notice the same as well as the appellate court also. Quite contrary the evidence was let in by the accused before the trial court, even the finding of the appellate court itself is not in accordance with the facts and circumstances of the case.

8.Per contra, the learned counsel appearing for the respondent would submit that the sale was entered in 2001 and a suit for recovery of money was filed and there was a compromise between the parties. The above said cheque was stolen by the complainant, over which, a criminal case was also registered against the complainant. on the basis of the complaint given by the respondent herein. In the alleged disputed cheque, except the signature, all other matters have been filled up by the complainant.

9.In the light of the above said facts and circumstances and rival submissions, let us go to the finding of the trial court as well as the appellate court.

10.Reading of the finding of the trial court shows that there was a transaction between the complainant's father and the respondent herein, over the discharge of a liability. When that is being so, why the cheque was issued in favour of the complainant is not explained by her. More-over, it is also stated that the total sale amount was fixed at Rs.45,150/-. There is no recital to the effect that the balance amount remains to be paid. It was also agreed by the father of the complainant to the effect that if any liability arises out of the above said sale transaction, he would discharge the same.

11.Absolutely, there was no evidence on the part of the complainant to show that there was oral agreement between the parties, by which the accused undertook to discharge the liability, which was due to be paid to the Bank. So when the basic liability itself is not supported by any evidence, the finding recorded by the trial court to the effect that the basic fact has not been established also did not find favour with the appellate court in Cr.A No.14 of 2018.

12.The petitioner is not able to substantiate her contention that there was a legally enforceable liability between herself and the accused herein.

13.Further reading of the judgment of the appellate court shows that on the basis of Ex.P9, which was the one time settlement entered into between the Bank and the complainant's father, three properties were included. For three properties only, the above said one time settlement was arrived. When that is being so, only one plot was sold to the accused, who is the respondent herein. How the respondent was liable to pay or discharge the above said Rs.7,75,000/- to the Bank is not also properly explained by the complainant. This is the vital factor, which weighed upon the appellate court in recording the finding against the appellant.

14.Even though the signature is admitted, unless the basic facts are established with regard to the above said liability, when serious doubt has also been raised by the accused with regard to the liability, then presumption under section 139 of the Negotiable Instruments Act will not come into play. The accused has successfully rebutted the presumption under section 139 of the Negotiable Instruments Act on the basis of the facts and circumstances. So the circumstance clearly stands against the case of the petitioner.

15.Even though, it is contended that the above said cheque has been stolen by the complainant's father, it is not supported even by circumstance. Mere admission of the signature is not sufficient, in the above said fact and circumstance of the case, to fix the responsibility upon the respondent for the debt or the liability as the case may be. So, I find absolutely no merit in this revision.

16.In the result, this criminal revision fails and the same is **dismissed.**

04/01/2023

Index:Yes/No
Internet:Yes/No

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To,

1.The Principal District Judge,
Dindigul.

2.The Judicial Magistrate No.II,
Dindigul.

G.ILANGOVAN, J

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