



Crl.A.No.197 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 21.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No.197 of 2014

K.Kalimuthu

... Appellant

Versus

P.Ayyasamy

... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal in C.C.No.48 of 2012 dated 21.01.2014 on the file of the learned Judicial Magistrate, Fast Track Court -I (Magisterial Level), Coimbatore (originally filed STC.No.611 of 2007 on the file of the Judicial Magistrate No.I, Coimbatore).

For Appellant

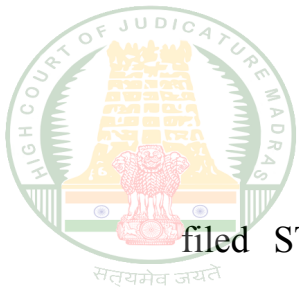
: Mr. C. Veeraraghavan

For Respondent

: Mr. M. Devaraj

JUDGMENT

This Criminal Appeal has been filed to set aside the order of acquittal in C.C.No.48 of 2012 dated 21.01.2014 on the file of the learned Judicial Magistrate, Fast Track Court -I (Magisterial Level), Coimbatore (originally



Crl.A.No.197 of 2014

filed STC.No.611 of 2007 on the file of the Judicial Magistrate No.I,
Coimbatore).

2. As per the submission of the learned Counsel for the Appellant, the Appellant is the Complainant in C.C.No.48 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court - I (Magisterial Level), Coimbatore. Earlier the Complaint was filed before the learned Judicial Magistrate -I, Coimbatore and numbered as STC.No.611 of 2007, it was subsequently withdrawn and transferred to the file of the learned Judicial Magistrate, Fast Track Court - I, (Magisterial Level), Coimbatore. As per the Complaint, the Complainant and the Accused are known to each other. The Accused borrowed Rs.2,00,000/- as loan from the Complainant on 08.09.2004 for his urgent business expenses and agreed to repay the same within a year at the rate of 24% per annum. On the same day, the Accused executed a demand promissory note for a sum of Rs.2,00,000/- to the Complainant. After repeated demands, the Accused had issued cheque for Rs.2,00,000/- bearing Cheque No.148227 dated 13.09.2005 drawn on South Indian Bank, NGO Colony , Coimbatore for discharging his part liability. The Complainant presented the cheque for encashment through Indian Overseas Bank, Kurudampalayam Branch, Coimbatore and the same was returned with an endorsement “funds



Crl.A.No.197 of 2014

WEB COPY

insufficient” on 10.11.2005. Thereafter, the Complainant issued a statutory notice to the Accused on 07.12.2005 and the same was received by the Accused. The Accused sent a reply notice to the Complainant dated 28.12.2005. In spite of the legal notice, the Accused has failed to repay the cheque amount as well as interest. Therefore, he was prosecuted by the Complainant for the offence under Section 138 of Negotiable Instruments Act. After recording sworn statement of the Complainant and the materials placed before the learned Judicial Magistrate, Fast Track Court-I, (Magisterial Level), Coimbatore, the learned Judicial Magistrate, Fast Track Court-I, (Magisterial Level), Coimbatore had issued summons to the Accused. The Accused on receipt of summons had entered appearance. He was furnished copies under Section 207 Cr.P.C., Since he denied the offence committed by him, the learned Judicial Magistrate, Fast Track Court-I, (Magisterial Level), Coimbatore had ordered trial. During trial, the Complainant examined himself as P.W-1 and marked documents under Ex.P-1 to Ex.P-5. Thereafter, incriminating evidence was put to him in the proceedings under Section 313 Cr.P.C., the Accused denied the incriminating evidence against him. The Accused had examined himself as D.W-1 and marked documents Ex.D-1 to Ex.D-12. On appreciation of evidence, the learned Judicial Magistrate - I, Fast Track Court, (Magisterial Level), Coimbatore by Judgment dated



Crl.A.No.197 of 2014

21.01.2014 in C.C.No.48 of 2012 rejected the claim of the Complainant and dismissed the Complaint thereby acquitting the Accused from the charge under Section 138 of the Negotiable Instruments Act. Aggrieved by the dismissal of the Complaint, the Complainant himself had preferred this Appeal.

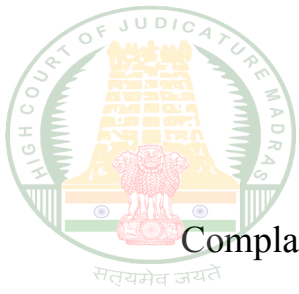
3. It is the contention of the learned Counsel for the Appellant that the learned Judge instead of drawing adverse inference against the Accused in the light of Ex.D-1 to Ex.D-12, had arrived at a finding that the Complainant miserably failed to prove the prior liability of the Accused and thereby dismissed the Complaint. The defence of the Accused is that when he was questioned at the time of furnishing of copies that no liability between the Complainant and the Accused, the Accused availed loan from M/s.Priyamangala Finance in which T.K.Shanmugam was the Partner. After availing loan, he had purchased two wheeler. At the time of availing loan, he executed promissory note and handed over the cheque bearing cheque No.148227 dated 13.09.2005 drawn on South Indian Bank, NGGO Colony, Coimbatore. As per his submission, the Accused is alleged to have settled the loan with M/s.Priyamangala Finance. But the promissory note executed by him in favour of M/s.Priyamangala Finance and the cheque was duly signed by him and handed over to M/s.Priyamangala Finance through its



Crl.A.No.197 of 2014

Partner/T.K.Shanmugam was not returned. Therefore, he had issued a notice calling upon the Partner/T.K.Shanmugam to return the promissory note and blank duly signed cheque bearing Cheque No.148227. Instead of handing over the promissory note and the cheque to the Accused, the Partner/T.K.Shanmugam had by unfair means handed over the same to the Complainant herein as though the Accused had borrowed from him. The Complainant had filled up the cheque and invoked the Provision of Section 138 of Negotiable Instruments Act. Therefore, the Complaint is to be dismissed and the Accused is to be acquitted. The learned Judge had on perusal of Ex.D-1 to Ex.D-12, arrived at a conclusion that the defence of the Accused was made out through preponderance of evidence, thereby rejected the claim of the Complainant and dismissed the Complaint. The judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) at Coimbatore is perverse. Therefore, the same is to be set aside and the Accused is to be convicted and the compensation is also to be ordered against the Accused.

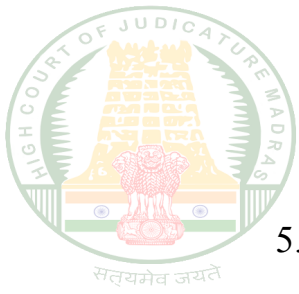
4. It is the contention of the learned Counsel for the Appellant that the signature found on the cheque which was marked as Ex.P-2 was not denied by the Accused. Therefore, the Court has to draw presumption in favour of the



Crl.A.No.197 of 2014

WEB COUNCIL

Complainant under Section 118 of the Negotiable Instruments Act. The discussion of evidence in the Judgment of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Coimbatore is uncalled for. The learned Judicial Magistrate has misdirected himself and dismissed the Complaint. The Accused is duty bound to prove his contention until otherwise the signature of the Accused in the cheque is not disputed. The presumption under Section 118 of the Negotiable Instruments Act holds good in favour of the Complainant. It is to be noted that the Partner T.K.Shanmugam of M/s.Priyamangala Finance was not at all examined to prove the claim of the Accused that he availed two-wheeler loan from M/s.Priyamangala Finance for which only he had issued promissory note under Ex.P-1 and cheque under Ex.P-2. Till that is not proved, the evidence of the Accused/D.W-1 regarding no prior liability with the Complainant has to be rejected. Instead, the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Coimbatore had arrived at a conclusion that the preponderance of materials available in the evidence of the Accused as D.W-1 and documents under Ex.D-1 and Ex.D-12 gives presumption to the Court that there is no prior liability between the Complainant and the Accused. The said finding is perverse and is to be dismissed.



5. The learned Counsel for the Respondent submitted that the

Respondent in this Appeal is the Accused before the trial Court. The cheque was not issued to the Complainant on the date mentioned in the statutory notice. The Accused having availed a two-wheeler loan from M/s.Priyamangala Finance. After availing of the loan, he repaid the loan. In support of his contention, the Accused had examined himself as D.W-1 and marked documents Ex.D-1 to Ex.D-12. Therefore, the rebuttal presumption available to the Accused under Section 139 of Negotiable Instruments Act had been made out by preponderance of probabilities. The defence of the Accused was probablised through the materials available before the trial Court under Ex.D-1 to Ex.D-12. Therefore, the Judgment of the learned Judicial Magistrate, Fast Track Court, (Magisterial Level), Coimbatore that there is no prior liability by the Accused to the Complainant in this case. The learned Judge had discussed elaborately clearly the defence of the Accused and the presumption in favour of the Complainant had been dis-lodged by the evidence of the Accused through D.W-1 and Ex.D-1 and Ex.D-12. The Judgment of the learned Judicial Magistrate, Fast Track Court – I, (Magisterial Level), Coimbatore in Paragraph No.7 of the Judgment is a well-reasoned Judgment which does not warrant any interference. Therefore, the Appeal lacks merits and is to be dismissed. The finding recorded by the



Crl.A.No.197 of 2014

learned Judicial Magistrate, Fast Track Court – I (Magisterial Level),

Coimbatore in C.C.No.48 of 2012 dated 12.01.2014 is to be confirmed.

Point for consideration

Whether the Judgment of the learned Judicial Magistrate, Fast Track Court – I (Magisterial Level), Coimbatore in C.C.No.48 of 2012 dated 21.01.2014 is to be set aside as perverse?

6. Heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent.

7. Perused the deposition of Complainant as P.W-1, the documents marked on the side of the Complainant as Ex.P-1 to Ex.P-5 and the evidence of the Accused as D.W-1 and the documents under Ex.D-1 to Ex.D-12 and the Judgment of the learned Fast Track Court – I (Magisterial Level), Coimbatore in C.C.No.48 of 2012 dated 21.01.2014.

8. On perusal of the Judgment of the learned Judicial Magistrate, Fast Track Court – I (Magisterial Level), Coimbatore, it is found that the discussion of the evidence of the learned Judge cannot at all be accepted. The



Crl.A.No.197 of 2014

WEB COURT

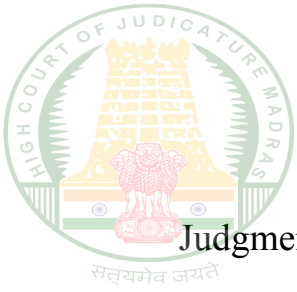
defence of the Accused is clear that he had availed loan from M/s.Priyamangala Finance for which he had executed the promissory note and signed filled cheque handed over by him to T.K.Shanmugam/Partner of M/s.Priyamangala Finance. Then, it is for the Accused to serve summons on the said T.K.Shanmugam and mark those documents until otherwise T.K.Shanmugam is examined, the documents marked through the Accused himself as D.W-1 will not help the Accused to rebut the presumption of the Complainant as per the Provisions of the Negotiable Instruments Act under Sections 118, 138 and 139 which are all in favour of the Complainant. The holder of the cheque, the Provision of the Sections 118 or 139 of the Negotiable Instruments Act gives a burden of proof on the Accused to rebut the presumption in favour of the Complainant for which the Accused has to put forth his defence available. Here, the competent Witness is not Accused but the person from whom he is alleged to have availed loan from M/s.Priyamangala Finance and its Partner T.K.Shanmugam, till he had not examined as a witness. Till he had marked the loan availed from M/s.Priyamangala Finance and its repayment through proper documents, “the claim of probabilities in favour of the Accused” had not been made out. The claim of the Accused that he had availed two wheeler loan from M/s.Priyamangala Finance and its Partner T.K.Shanmugam, for which he is



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alleged to have executed a blank promissory note and cheque bearing No.148227 had been denied by the learned Counsel for M/s.Priyamangala Finance. The claim of the Accused that he had issued cheque bearing No.148227 and the blank promissory note had been denied by the the learned Counsel for M/s.Priyamangala Finance. Therefore, the defence of the Accused had not been probablised. The documents under Ex.D-1 to Ex.D-12 had not probablised the case of the Accused. Therefore, the Judgment of the learned Fast Track Court – I (Magisterial Level), Coimbatore in C.C.No.48 of 2012 dated claiming that the defence of the Accused is probablised through the evidence of D.W-1 and Ex.D-1 to Ex.D-12 is erroneous and the same cannot be accepted in the light of the principle governing Section 138 of Negotiable Instruments Act. Therefore, the Judgment had to be set aside. The Accused had not proved the valuable defence of the Accused or disprove the claim of the Complainant as P.W-1. Therefore, he had not probablised the defence available to the Accused. Under those circumstances, the Judgment of the Fast Track Court – I (Magisterial Level), Coimbatore is perverse and the same is set aside.

9. In the light of the above discussions, the point for consideration is answered in favour of the Complainant and against the Accused. The



Crl.A.No.197 of 2014

Judgment of the learned Judicial Magistrate, Fast Track Court -I (Magisterial Level), Coimbatore C.C.No.48 of 2012 dated 21.01.2014 (originally filed STC.No.611 of 2007 on the file of the Judicial Magistrate No.I, Coimbatore) is to be set aside as perverse.

In the result, this ***Criminal Appeal is allowed.*** The Judgment of the learned Judicial Magistrate, Fast Track Court -I (Magisterial Level), Coimbatore C.C.No.48 of 2012 dated 21.01.2014 (originally filed STC.No.611 of 2007 on the file of the Judicial Magistrate No.I, Coimbatore) is set aside.

The learned Judicial Magistrate, Fast Track Court -I (Magisterial Level), Coimbatore is directed to issue warrant against the Accused and issue direction to the Station House Officer of the Police Station concerned to execute the Warrant and produce the Accused before the Court in order to undergo the period of one year imprisonment and pay a cheque amount of Rs.2,00,000/- as compensation.

21.12.2024

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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Crl.A.No.197 of 2014

SATHI KUMAR SUKUMARA KURUP, J.,

dh

To

1. The learned Judicial Magistrate,
Fast Track Court -I (Magisterial Level),
Coimbatore.
2. The Section Officer,
Criminal Section,
High Court Madras.

Judgment in
Crl.A.No.197 of 2014

21.12.2024