IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.241 of 2010

R.M.Narayanan ... Appellant

vs.

Seetha Ramasamy ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, against the judgment and orders dated 15.07.2009 passed in C.C.No.134 of 2004 by the Judicial Magistrate, Tambaram.

For Appellant : Mr.S.Sairaman

For Respondent : No Appearance

JUDGMENT

Challenging the order of acquittal dated 15.07.2009 passed by the Judicial Magistrate, Tambaram in C.C.No.134 of 2004, the present criminal appeal is filed by the appellant/complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present criminal appeal would also be indicated.

3. The case of the complainant in a nutshell is as follows:-

The accused borrowed a sum of Rs.2,50,000/- from the complainant on 24.11.2003 and issued a Cheque (Ex.P1) on the same day drawn on Federal Bank, T.Nagar Branch, for a sum of Rs.2,50,000/-. When the cheque was presented by the complainant for collection on 27.11.2003 through his bankers, viz., Indian Overseas Bank, Tambaram Branch, the same was returned for the reason "Insufficient Funds", as is seen from the cheque return memo (Ex.P2) dated 28.11.2003. Thereafter, the complainant issued a statutory notice dated 29.11.2003 (Ex.P3) through his counsel to the accused calling upon her to pay the amount due under the Cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 02.12.2003, as is evidenced by the postal acknowledgment card (Ex.P4), the accused did not come forward to make good the payment nor sent any reply notice.

4. Therefore, the complainant filed a private complaint under Section 200 of the Code of Criminal Procedure before the Judicial Magistrate, Tambaram in C.C.No.134 of 2004 against the accused for an offence punishable under Section 138 of Negotiable Instruments Act, 1881. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the Judicial Magistrate furnished her copies of the records under Section 207 Cr.P.C. When the accused was questioned with regard to the substance of accusation made in the complaint, she pleaded not guilty. Therefore, the case was posted for trial.

5. In order to bring home the guilt of the accused, the complainant examined himself and one another witness and marked Ex.P1 to Ex.P4. The accused when questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, denied of having committed any offence. She examined herself as D.W.1 and marked Ex.R1.

6. The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, held that the accused is not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted her under Section 255(1) Cr.P.C., vide his judgement and orders dated 15.07.2009. Aggrieved over the same, the present criminal appeal is filed by the appellant/complainant.

7. Heard Mr.S.Sairaman, learned counsel appearing for the appellant/complainant.

8. Mr.S.Sairaman, learned counsel appearing for the appellant/complainant would contend that though the accused had not denied her signature on the cheque (Ex.P1), and did not also send any reply to the statutory notice, the Trial Court had wrongly acquitted the accused. He therefore, prayed for convicting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act.

9. At the outset, it may be observed that the accused admitted her signature on the cheque (Ex.P1). Once the signature is admitted, there is

a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved.

10. In the instant case, the contention of the respondent/accused is that on 09.01.2004 at about 11.00 a.m., the appellant/complainant came down to her house and obtained her signature on the cheque under threat and coercion. She had also lodged a complaint in this regard with the Inspector of Police, Adyar Police Station. She marked the challan issued by the Police as Ex.R1. Moreover, she is not the authorised signatory of the account in which the cheque was issued and therefore, had rebutted the presumption of 'legally enforceable debt'.

11. Thiru.Ganesan, (P.W.2), Assistant Manager, Federal Bank, T.Nagar Branch in his evidence had stated that the husband of the accused Ramasamy is having a Current Account with their Bank in the name of A.R.S.S. Enterprises and that the accused is not having any account with their bank.

12. It is not the case of the complainant that the respondent/accused is the owner of 'A.R.S.S. Enterprises' or a partner in

the said Firm. When the accused does not have any account with the Federal Bank, T.Nagar Branch, the Cheque (Ex.P1) issued by her cannot be honoured by the Bank. Moreover, the name of the husband of the respondent/accused is printed below the signature of the accused. The complainant even without verifying the same had obtained the cheque from the accused and therefore, the order of acquittal passed by the Trial Court cannot be assailed.

13. **In the result**,

(i) The Criminal Appeal is dismissed.

(ii) The judgment and orders dated 15.07.2009 passed by the Judicial Magistrate, Tambaram, in C.C.No.134 of 2004 , is confirmed.

20.06.2024

Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm

To

1.The Judicial Magistrate,
Tambaram.

2.The Section Officer, Criminal Section,
High Court, Madras.

R.HEMALATHA, J.

dm

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