



CRLA.No.425 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

Crl.A.No.425 of 2014

J.Thangaraj

... Petitioner

Vs.

D.Pannerselvam

... Respondent

Prayer: Criminal Appeal is filed under Section 378 Cr.P.C. to set aside the judgment of the Judicial Magistrate cum Fast Track Court, Alandur, Kancheepuram District made in C.C.No.158 of 2011 dated 04.12.2013 acquitting the accused / respondent for the offence punishable under Section 138 of the Negotiable Instruments Act and convict him for the said offence.

For Petitioner : Mr.Prasanna Venkatesh

For Respondent : Mr.S.Mohanasundararajan



CRLA.No.425 of 2014

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JUDGMENT

This appeal is directed against the judgment in C.C.No.158 of 2011, on the file of the Judicial Magistrate Court (Fast Track Court), Alandur, by which the learned Magistrate has acquitted the respondent / accused for an alleged offence U/s.138 of the Negotiable Instruments Act, 1881. This appeal was earlier preferred before the Sessions Court, where it was taken on record as C.A.No.10 of 2018, but inasmuch as the appeal was preferred against an acquittal, it later came to the file of this Court.

2.The facts fall within a narrow compass.

(a) The appellant herein is a nephew of the accused. The wife and son of the accused possessed some 60 cents of vacant site in Survey No.33/1 of Serappanancherry Village, Kancheepuram District. This site was developed and divided into 14 plots by the accused. While so, he executed Ex.P10, General Power of Attorney, dated 22.01.2008 as regards 9 plots, which included plots 12, 13, and 14. Getting into those details is not very germane for the present



WEB COPY



CRLA.No.425 of 2014

purpose, but suffice to say that dispute arose vis-a-vis plots 12, 13 and 14. According to the complainant, subsequent to Ex.P10, some strangers have come and occupied these plots and asserted their right to the same and hence the complainant held discussions with the accused and his family members in the presence of the panchayatdhars. This resulted in Ex.P6, Memorandum of Understanding, executed on 29.03.2009, wherein the accused was alleged to have agreed to pay the complainant a sum of Rs.13.0 lakhs. According to the appellant, towards the payment of this admitted liability, the accused had issued 3 cheques bearing Nos.925388, 925389 and 925390 dated 08.04.2009, 12.04.2009 and 15.04.2009 respectively.

- (b) On the very next day, the respondent/accused preferred a complaint before the jurisdictional police station vide Ex.R2 dated 30.03.2009, wherein he had alleged that the complainant and his henchmen came in a car, abducted him from his place of work, brought him to his residence, and forced him to execute Ex.P6 and also obtained Ex.P1 series of cheques under coercion. Indeed, Ex.P6 refers to the very cheque numbers referred to above. The police did not register an



WEB COPY



CRLA.No.425 of 2014

F.I.R, but held an enquiry into the complaint, during which both the respondent as well as the complainant have given separate statements before the police vide Ex.R10 and Ex.R11, that they would solve the problem through Court. Accordingly, the police concerned has closed the complaint.

(c) It is in this background, the complainant has deposited the Ex.P1 cheques on the respective date, which they bear for encashment, and on presentation, the cheques were dishonoured by the respondent's banker on the ground that payment on the cheques were stopped by the respondent.

(d) It soon was followed by the statutory notice (Ex.P3), but it was not served on the respondent and returned with a postal endorsement that there was no such addressee. This returned cover was marked as Ex.P4, following which the appellant had issued another notice under certificate of posting and this is evidenced by Ex.P5.

3.During trial, the appellant examined himself as PW1 and also examined PW2 and PW3 to establish the dispute over plots 12 to 14. For the respondent, he examined himself as RW1 and also examined the Sub



CRLA.No.425 of 2014

WEB COPY

Inspector of Police (RW2), before whom Ex.R2, complaint was preferred.

On appreciating the evidence, the trial Court held that there is a preponderating probability to believe that the complainant had obtained the cheques in question by subjecting the respondent to coercion, and held that this has created reasonable probability to impeach the presumption U/s.139 of the Negotiable Instruments Act, 1881 and proceeded to acquit the respondent. This judgement of the trial Court is now under challenge.

4.Heard both sides. The learned counsel for the appellant tried his best to convince the Court as to the conduct of the respondent in enacting a drama by filing Ex.R2, complaint before the police, which he later withdrew. When the complaint is so withdrawn, it necessarily implies that the respondent has given up his allegations therein, which in turn would imply that the allegations made by the complainant is true and this would instantly invite the presumption U/s.139 of the Negotiable Instruments Act, 1881.

5.Per contra, the learned counsel for the respondent would submit that the complaint was not pressed only after the appellant had participated in the enquiry by the police, wherein he had filed Ex.R11 statement, in which he had



CRLA.No.425 of 2014

WEB COPY

indicated his intent to resolve the issue through judicial process. What is significant here is that, when the appellant gave his Ex.R11 statement, he knew the nature of allegations made in Ex.R2, complaint. Secondly, at no point of time, the respondent had withdrawn his complaint, but has merely informed the police that he would obtain necessary relief through judicial process.

6. In a case of this nature, all that this Court is required to consider is the strength of the line of defence adopted by the accused to impeach the statutory presumption available to the complainant U/s.139 of the Negotiable Instruments Act, 1881. Issuance of cheques was not denied, but the issue is whether it was voluntarily delivered by the respondent for discharging an outstanding liability? Here, that liability itself is traceable to Ex.P6, and Ex.P6 is stated to have been obtained on 29.03.2009. According to the appellant, on the same date the respondent had issued Ex.P1 series of cheques. But the conduct of respondent becomes significant since on the very next day he had preferred Ex.R2 complaint, wherein he mentions specifically the numbers which the cheque leaves bear. Notwithstanding the later course of action, which both the parties might have adopted vide Ex.R10 and Ex.R11,



CRLA.No.425 of 2014

WEB COPY

the fact remains that there indeed was a complaint and it was preferred on 30.03.2009, and this matters to this Court. After all, the accused defending a charge U/s.138 of Negotiable Instruments Act, 1881, is only required to create a probability of his case, which if done, then law treats it as worthy enough to disturb the presumption available to the complainant under Sec.139 of the Negotiable Instruments Act. That precisely has happened before the trial Court and this Court does not find anything unreasonable in the approach of the trial Court.

7.In the result, this appeal stands dismissed.

08.08.2024

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Index : yes / no
Neutral Citation

To

The Judicial Magistrate
cum Fast Track Court
Alandur
Kancheepuram District



WEB COPY



CRLA.No.425 of 2014

N.SESHASAYEE, J.

kas

Crl.A.No.425 of 2014

08.08.2024