



Crl. A. No.449/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.07.2024	28.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.449 OF 2021

S.Selvarasu

.. Appellant

- Vs -

Kalimuthu

.. Respondent

Criminal Appeal filed u/s 374 (2) Cr.P.C. praying this Court to set aside the judgment dated 4.1.2021 passed in S.T.C. No.53 of 2016 by the Judicial Magistrate No.I, Perambalur in erroneously acquitting the accused.

For Appellant : Mr. Sai Krishna for
M/s. V.Srimathi

For Respondents : Mr. R.Ganesh Kumar

JUDGMENT



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The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in S.T.C. No.53/2016 on the file of the Judicial Magistrate No.1, Perambalur, dated 4.1.2021 in and by which the respondent herein was acquitted in the case u/s 138 of the Negotiable Instruments Act (for short 'the Act'), by filing the present appeal.

2. It is the case of the appellant that the appellant and respondent are known to each other and the appellant is in jewellery business, while the respondent is running a fancy store and they are friends. Whiles, towards the improvement of his business, the respondent sought for a loan of Rs.35 Lakhs from the appellant with a promise to repay the same. Towards the said loan, the appellant executed a pro note on Rs.20/- stamp paper acknowledging the debt and also issued a cheque bearing No.000026 drawn on Lakshmi Vilas Bank, Perambalur, for a sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs only).

3. It is the further case of the appellant that at the time of issuance of the said cheques, the respondent promised that the said cheques would be honoured and believing the said assurance, when the appellant presented the



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cheque to his banker for collection, the same was returned with an endorsement “Account Closed” vide return memo dated 25.5.2015. It is the further case of the appellant that the act of the respondent to give the cheque was a deliberate act to defraud the appellant and, therefore, the appellant caused a legal notice u/s 138 of the Act on 18.06.2015. However, inspite of receipt of notice, without repaying the said amount, the respondent issued false reply to the appellant on 27.6.2015, necessitating the complaint filed by the appellant.

4. Upon examination of the complainant on oath u/s 200 Cr.P.C. and perusing the records, the court below, finding a prima facie case being made out, issued summons to the respondent and upon appearance, was provided with a copy of the complaint and the respondent pleaded not guilty.

5. On the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-5. On the side of the respondent, neither oral evidence nor documentary evidence was marked. The trial court, appreciating the materials available on record, held that the appellant has not established that the dishonoured cheque was issued for discharging a legally enforceable debt and,



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accordingly, acquitted the respondent, aggrieved by which the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that the cheque was issued by the respondent, which stood dishonoured and the notice sent by the appellant to the respondent u/s 138 of the Act did not evince any reply from the respondent, which clearly shows that he has not denied her liability. It is the further submission of the learned counsel that the respondent had not denied his signature in Ex.P-1, however, the court below had acquitted the respondent in his personal capacity as he has not impleaded the fancy store as an accused. The respondent being the signatory for the fancy store, the non-impleadment of the fancy store cannot be put against the appellant. Therefore, the dishonour of Ex.P-2 would definitely attract all the ingredients of Section 139 of the Act. It is the further submission of the learned counsel that the findings recorded by the court below with regard to the non-availability of the signature of the appellant in Ex.P-2 renders the said document doubtful is wholly erroneous, as even in the reply, Ex.P-5, the respondent has accepted his signature in Ex.P-2. Therefore, the non-availability of the signature of the appellant cannot be a ground to reject the



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case of the appellant. It is the further submission of the learned counsel that the respondent has not rebutted the presumption cast upon him u/s 139 of the NI Act and, therefore, the issuance of the cheque stands proved. Further it is the submission of the learned counsel that the business of the appellant has not been disputed, which clearly shows that the appellant has source enough to advance the loan, which aspect has not been properly considered by the court below. It is therefore the contention of the learned counsel that the court below has miserably failed to consider the evidence in proper perspective and, therefore the order passed by the court below requires interference at the hands of this Court.

7. Learned counsel appearing for the respondent submitted that even in the reply notice, Ex.P-5, the respondent has clearly stated that even the stamp paper was given for the purpose of the loan, which was sought to be arranged from elsewhere and not from the appellant and that towards the same, a blank cheque of the respondent was received by the appellant, which has since been misused. Therefore, unless the appellant proves that the sum was paid to the respondent through proper evidence, the mere claim of payment of amount and



the dishonour of cheque, which is in pursuant to the alleged amount received cannot form the basis to hold the respondent guilty of an offence u/s 138 of the NI Act. The court below has properly appreciated the evidence and acquitted the respondent, which does not require any interference.

8. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in **Babu Sahebagouda Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024)**, the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

*37. This Court in the case of **Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471)** encapsulated the legal position covering the field after considering various earlier judgments and held as below: -*

*“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: **(Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]***



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“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental



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principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581)** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;



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8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings



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on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

9. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate the evidence available on record to render a finding. However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

10. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record.



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11. Ex.P-1 is the cheque, which is alleged to have been issued by the respondent towards discharge of the liability to the appellant. However, there is no material to show as to when the loan was given to the respondent by the appellant and the date and the manner in which the loan was given to the respondent.

12. In the aforesaid factual scenario, Sections 138 and 139 of the Act, which are material to find out the legal presumption, which is casted on the accused/respondent with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondent, the said provisions are quoted hereunder for better appreciation:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to



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honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice. to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b)the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.



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139. Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.”

13. The appellant is drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondent to prove that the respective cheque, which is the subject matter of the present appeal was not issued towards the discharge of any debt or liability and in the absence of such proof, necessarily, the rigours of Section 138 of the Act would stand attracted.

14. In this regard, a careful perusal of the order passed by the court below reveals that the court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheque was dishonoured, however, there is no material placed by the appellant to show that it was issued towards the discharge of a legally enforceable debt.



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15. A careful perusal of the order passed by the court below reveals that the court below has taken into consideration the deposition of P.W.1, both in chief and cross and Exs.P-1 and P-5, which clearly show that the respondent has clearly stated in Ex.P-5 that the cheque in question was issued in blank to the appellant by the respondent and that even Ex.P-2 was signed in blank by the respondent for the purpose of arranging loan from elsewhere for the respondent. Though there is no clear recording of finding, however, the fact remains there are requisite materials in the form of Exs.P-1, P-2 and P-5, which have been relied upon by the respondent to rebut the presumption u/s 139 of the NI Act.

16. To take shelter under the presumption provided for u/s 139 of the Act, the appellant has to first establish that the cheque was issued for discharging a legally enforceable debt, meaning thereby, that the payment of loan to the respondent should first stand established, which alone would go to show that there is a legally enforceable debt and towards the discharge of the said debt, the cheque was issued, which could be presumed.



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17. However, it is seen from the evidence of P.W.1, as also Exs.P-1, P-2 and P-5, that the loan was alleged to have been procured from outside source by the appellant for the respondent, as both being friends and towards the said loan, the cheque and blank stamp paper were signed and given, which is the defence taken by the respondent. In such a backdrop, in the absence of the appellant failing to prove that in fact the amount had changed hands between the appellant and the respondent in the form of loan, the appellant cannot enforce Section 138 of the NI Act.

18. Further, barring the above, it is to be pointed out that there are no details as to the date on which the loan was given and whether it was given in one lumpsum or in instalments. Further, it is to be pointed out that the amount advanced is not pittance, but Rs.35,0,000/- and definitely it would have been given by means of an instrument. The details of the instrument by which it was given has also not been spelt out. In the absence of any material to show the details of the loan given to the respondent and the means by which it was given, no presumption can be made that the claim of Rs.35,00,000/- by the appellant is



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a legally enforceable debt, which has to be discharged by the respondent, towards which the cheque was alleged to have been issued.

19. In the absence of any material to show the details of the loans given to the respondent and the date on which the said amount was parted with, the mere dishonour of the cheque cannot be said to have been issued by the respondent towards a legally enforceable debt.

20. Therefore unless the appellant discharges his burden by giving the details with regard to loan taken and the date on it was given to the respondent, placing the cheque, which is alleged to have been dishonoured, and is alleged to have been given by the respondent cannot be the basis to hold that a case u/s 138 of the Act is made out.

21. For the reasons aforesaid, the impugned order passed by the court below does not deserve any interference and the same stands affirmed. Accordingly, all the appeal fails and the same is dismissed.



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M.DHANDAPANI, J.

GLN

To

The Judicial Magistrate No.I
Perambalur.

**PRE-DELIVERY ORDER IN
CRL. A. NO. 449 OF 2021**



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**Pronounced on
28.08.2024**