IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

Crl.A.No.306 of 2022

S.Ganesan ... Appellant / Complainant

Vs.

M.Sathish ... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure, to set aside the judgment dated 10.12.2021 passed in C.A.No.388 of 2018 on the file of the III Additional District and Sessions Judge, Coimbatore reversing the judgment dated 15.12.2017 passed in C.C.No.299 of 2012 on the file of the Judicial Magistrate (Fast Track Court at Magisterial Level -1), Coimbatore by allowing the present appeal and convict the respondent in accordance with law.

For Appellant : Mr.C.Vasudevan

For Respondent : Mr.M.Guruprasad

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JUDGMENT

The unsuccessful complainant, having lost before the Court below, has assailed the said order, passed in C.A.No.388 of 2018 on the file of learned III Additional District and Sessions Judge, Coimbatore dated 10.12.2021, in and by which the respondent herein was acquitted in the case u/s 138 of the Negotiable Instruments Act (for short 'the Act'), has filed the present appeal.

2. It is the case of the appellant that the complainant was running a provisional store at Kamarajar Road, Singanallur, Coimbatore. On 26.12.2010, the respondent borrowed a sum of Rs.3,00,000/- from the complainant promising him to repay the same with an interest at the rate of 15% p.a., within a period of two months in order to develop his business. Inspite of repeated reminders, the respondent did not pay the amount due to the appellant. However, after much persuasion, the respondent issued a post dated cheque dated 28.02.2011 for a sum of Rs.3,07,500/- and when the appellant presented the cheque for collection, the same was returned by his banker with the endorsement 'Insufficient Funds in the Account' on 15.04.2011. Since the respondent deliberately failed to pay the amount, the appellant caused a legal notice dated 06.05.2011 and the respondent while acknowledging the receipt of the same, had denied to pay his liability. Therefore, left with no other

alternative, the complaint was filed by the appellant for an offence u/s 138 and 141 of the Act.

3. 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.

4. On the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-4. On the side of the respondent, D.W.1 was examined and no documentary evidence was marked. The trial court, appreciating the materials available on record, has found the accused guilty and convicted the accused for the offence under Section 138 of Negotiable Instruments act and sentenced him to undergo six months simple imprisonment and the accused was directed to pay the compensation of Rs.3,07,500/-, failing which the accused was directed to undergo two months simple imprisonment in default. Challenging the same, the accused has preferred an appeal before the lower appellate

Court in Crl.A.No.388 of 2018, however, the lower appellate Court vide judgment dated 10.12.2021 had held that the appellant has not established that there was a legally enforceable debt for which the cheque was issued, which was dishonoured and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which the present appeal has been filed by the complainant.

5. Learned counsel appearing for the appellant submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. He further submitted that the court below had clearly held that the cheque had not been misused by the appellant and that being the case, a duty is cast on the respondent to rebut the presumption u/s 139 of the Act and failure by the respondent would clearly lead to the presumption that the cheque was issued for discharging the legally enforceable debt.

6. It is the further submission of the learned counsel that it is incumbent on the part of the respondent to show how the cheque fell into the hands of the appellant and there being no claim that the cheque was lost as no police complaint was given, the only presumption that could be drawn is that the cheque was given by the complainant to the appellant and, therefore, the dishonour would entail action u/s 138 of the Act.

7. The learned counsel for the respondent submitted that the appellant has not approached the Court below with clean hands and he further submitted that admittedly there is no documentary evidence in order ascertain the financial capacity of the appellant to lend a sum of Rs.3,00,000/- to the respondent and upon considering all the oral and documentary evidence the Court below has dismissed the complaint filed by the appellant, which does not warrant any interference. He further submits that in the complaint given by the complainant, he has stated that the cheque was issued on 28.02.2011 whereas in his legal notice the date of issuance of the cheque was shown as 26.02.2011. Moreso, P.W.1/ complainant, during his cross examination has stated that he did not know the full address of the respondent. The complainant has further

stated that he did not know the name of the company run by the respondent and he did not know whether the accused had closed his company at the time of borrowal of loan. On a perusal of the evidence of P.W.1, the Court below held that when the complainant is not aware of the details of the respondent, the claim made by the complainant that he was having continuous money transaction with the respondent cannot be acceded to. The said discrepencies was rightly considered by the lower appellate Court and has upheld the decision of the trial Court which cannot be interfered with.

8. Heard the learned counsel appearing for the parties and in view of the fact that the appeal is against the acquittal of the respondent and there is double presumption with regard to the innocence of the accused/respondent, this Court, on the basis of materials available on record, is inclined to proceed further to analyse the evidence.

9. 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 [Chandrappav. State of Karnataka, (2007) 4 SCC 415]***
> >
> > > *"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 anorder of acquittal emerge:*
> > >
> > > *(1) An appellate court has full power to review, reappreciate and reconsider the evidenceupon 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 ownconclusion, both on questions of fact and of law.*
> > >
> > > *(3) Various expressions, such as, "substantial and compelling reasons", "good*

and sufficientgrounds", "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 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*

> *<u>strengthens the presumption of innocence</u>;*
>
> *8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*
>
> *8.3. <u>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</u>;*
>
> *8.4. <u>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</u>; 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 on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."

(Emphasis Supplied)

10. 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 re-appreciate the evidence available on record to render a finding. However, in re-appreciating the evidence, this Court has to see whether the view taken by the Court below could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the Court below, considered overall on the materials placed, is just and reasonable that the view taken by the Court below is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible.

11. 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 Court below is based on the materials available on record.

12. The Ex.P-2 is the cheque, which is alleged to have been issued by the respondent towards the discharge of the liability to the appellant. However, it is the case of the respondent that the cheque was given to D.W.1 who is the brother-in-law of the complainant by the respondent for the earlier transaction, for the purpose of security which was misused by D.W.1 and filed a case through the complainant.

13. 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 cheques 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 unpaideither because of the amount of money standing to the credit of that account is insufficient to 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 anoffence 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 thedrawer 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.

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."*

14. 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 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.

15. 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 the complainant has not been able to prove that the cheque in question was issued for discharge of legally enforceable debt. However, there is no documentary evidence to ascertain the financial capacity of the complainant to lend a sum of Rs.3 lakhs. Hence, the Court below has acquitted the accused from the charges leveled against him u/s.138 and

142 of the Act.

16. First of all, the presumption available u/s 139 has to be rebutted by the accused, whereinafter, a duty is cast on the complainant to establish that the cheque, which stood dishonoured, was issued for the purpose of discharging a legally enforceable debt.

17. However, it is to be pointed out that the dishonour of cheque would attract the provisions of Section 138 of the Act only when it has been issued for the purpose of discharging a legally enforceable debt.

18. When the appellant has not established that there exists a legally enforceable debt, which has to be paid by the respondent for which the cheque was issued, which has since been dishonoured, the mere dishonour of the cheque alone cannot form the basis to attract Section 138 of the Act.

19. 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 debt 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.

20. For the reasons aforesaid, the impugned judgment passed by the court below does not deserve any interference and the same stands affirmed. Accordingly, the Criminal Appeal is dismissed and the order passed in Crl.A.No.388 of 2018 on the file of the learned III Additional District and Sessions Judge, Coimbatore, dated 10.12.2021 is confirmed.

13.06.2024

Index : Yes / No
Speaking order / Non-speaking order
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To

1. The III Additional District and Sessions Judge,
   Coimbatore
2. Judicial Magistrate
   (Fast Track Court at Magisterial Level -1), Coimbatore

M.DHANDAPANI, J.

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