IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

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

Crl.A.No.311 of 2021

Vijaya ... Appellant / Complainant

Vs.

Nagendran ... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure, to set aside the judgment dated 14.12.2020 in C.C.No.28 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court-II, Coimbatore.

For Appellant : Mr.P.Paul Selvam

For Respondent : M/s..M.Venkadesh Kumar

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JUDGMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in C.C.No.28 of 2016 on the file of Judicial Magistrate, Fast Track Court-II, Coimbatore dated 14.12.2020, 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 appellant and respondent are known to each other for a period of ten years. It is further averred that the accused had borrrowed a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) in cash from the appellant / complainant by executing a promisory note in favour of the appellant for the purpose of emergency need and the accused consented to repay the said sum with interest at the rate of 1.50% per month. 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 on 15.12.2014 for a sum of Rs.3,00,000/- bearing No.373683 and when the appellant presented the cheque on 23.02.2015 for collection, but the same was returned by her banker with the endorsement 'Insufficient Funds in the Account'. Since the respondent deliberately failed to pay the amount, the appellant caused a legal notice dated 03.03.2015 and the respondent while acknowledging the receipt of the same, had denied to pay her liability.Therefore, left with no other alternative, the complaint was filed

by the appellant for an offence u/s 138 and 142 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 herself as P.W.1 and marked Exs.P-1 to P-4. On the side of the respondents, respondent examined himself as D.W. 1 and Exs.D-1 to D-4 were marked. The trial court, appreciating the materials available on record, 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.

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. It is the further submission of the learned counsel that the court below had clearly held that the cheque, which was alleged to have been given to the appellant by D.W.1 has not been established by the respondent and had clearly held that it 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 respondent to the appellant and, therefore, the dishonour would entail action u/s 138 of the Act. He

further submitted that, in order to repay the chit borne by the appellant, it is alleged that the appellant had requested the respondent to pay the chit amount to one Radhakrishnan who is the organizer of the chit and it was alleged by the respondent that he has also paid the said chit amount, for which the disputed cheque was issued, if it is so, the said Radhakrishnan was not examined before the Trial Court and such story was created by the respondent and without considering the said facts the trial Court had acquitted the accused which is *per se* unsustainable.

7. It is the further submission of the learned counsel that though the respondent failed to rebut the presumption u/s 139 of the Act and produced inadmissible documents Ex.D1 and D2 before the trial Court, the respondent was acquitted by the trial Court which is per se unsustainable. Moreso, the respondent marked Ex.D1, which is the loan agreement between the appellant and the respondent, wherein the cheque numbers and the signature were not clearly mentioned and the same was disputed before the Trial Court and in order to disprove the same, the respondent also has not taken any steps to send the same for expert opinion to find out as to whether the alleged signature, obtained from the

appellant, is genuine or not. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

8. The learned counsel for the respondent submitted that the appellant has not approached the trial Court 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 trial Court has dismissed the complaint filed by the appellant, which does not warrant any interference.

9. He further submitted that it is clear from the complaint filed by the appellant that during the months of May, June and July 2014, the accused borrowed a sum of Rs.3,00,000/- from the appellant, however, the specific dates were not mentioned in the complaint filed by the appellant. Moreso, the respondent's wife obtained hand loan for a sum of Rs.3,00,000/- from the appellant and the same was repaid by the

respondent as per the request of the appellant by way of chit to one Radhakrishnan, for which the cheques were issued, which was put against the respondent and all those facts were well appreciated by the trial Court and had concluded that there is no legally enforceable debt, which is perfectly in order and the same does not warrant any interference.

10. 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.

11. 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 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;*
>
> *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 on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court."*
>
> *(Emphasis Supplied)*

12. 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 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.

13. 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.

14. The Ex.P-1 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 the appellant to the tune of Rs.3,00,000/- by D.W.1 was issued only for chit transaction and not for the alleged debt and it has been misused by the appellant.

15. 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 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."

16. 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.

17. 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 such a huge sum of Rs.3 lakhs. Since the financial capacity of the complainant is left unproved after being specifically denied by the respondent, following the ratio laid down by the Hon'ble Apex Court in the case of ***Basalingappa Vs.Mudibasappa*** in ***2019 (1) DCR 612****,* the Court below accepted the defence of the accused which cannot be interference with.

18. Moreso, in the complaint it is averred that during the months of May, June and July 2014, the accused borrowed a sum of Rs.3,00,000/- from the appellant, however, the specific dates were not mentioned in the complaint filed by the appellant. It is also seen that there is no whisper about the loan agreement between the appellant and the respondent in the complaint filed by the appellant. Hence, the trial Court has acquitted the accused from the charges leveled against him u/s.138

and 142 of the Act.

19. 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.

20. 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.

21. 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, more so, when it is the case of the respondent that the cheque, which was given for security purpose has been misused cannot be brushed aside.

22. 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.

23. For the reasons aforesaid, the impugned orders 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 C.C. No.28 of 2016 on the file of the Judicial Magistrate, Fast Track Court – 2, Coimbatore, dated 14.12.2020 is confirmed.

13.06.2024

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

Judicial Magistrate, Fast Track Court-II, Coimbatore.

M.DHANDAPANI, J.

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