IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

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

Crl.A.No.191 of 2024

Bala @ Chinnasmay ... 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 30.08.2013 passed by Judicial Magistrate, Fast Track Court, Dharmapuri in S.T.C.No.115 of 2011.

For Appellant : Mr.T.K.S.Bharathy Shri

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JUDGMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in S.T.C.No.115 of 2011 on the file of Judicial Magistrate, Fast Track Court, Dharmapuri dated 30.08.2013, 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 respondent borrowed a sum of Rs.20,00,000/- from the appellant in order to meet out his daughters' educational and other family expenses. However, after much persuasion, the respondent issued two post dated cheques on 20.06.2009 and 20.07.2009 and when the appellant presented the cheque on 03.10.2009 for collection, but the same were returned by his banker with the endorsement ‘Insufficient Funds in the Account’. Since the respondent deliberately failed to pay the amount, the appellant caused two legal notices dated 30.10.2009 and 09.11.2009 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 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-9. On the side of the respondents, D.W. 1 and D.W.2 were examined 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 cheques were issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which, the appellant filed an appeal in Crl.A.No.22 of 2018 and the said appeal was allowed vide judgment dated 24.10.2019 and respondent was found guilty imposing one year simple imprisonment with fine of Rs.20,00,000/-, in defualt to undergo three months simple imprisonment. Thereafter, a criminal revision was preferred by the respondent which was transposed and thereby, the present appeal has been filed by the complainant against the order passed by the trial Court as per the direction of this Court.

5. Learned counsel appearing for the appellant submitted that the cheques were issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheques, 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 cheques were 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 cheques fell into the hands of the appellant and there being no claim that the cheques was lost as no police complaint was given, the only presumption that could be drawn is that the cheques were given by the respondent to the appellant and, therefore, the dishonour would entail action u/s 138 of the Act.

7. It is the further submission of the learned counsel that P.W. 1 had clearly spoken that the disputed cheques were issued as security and not towards the alleged debt as probable. 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. Heard the learned counsel appearing for the petitioner 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 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)

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 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.

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 trial court is based on the materials available on record.

12. The Ex.P-1 and P.2 are the cheques, 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 cheques, in blank, was given to the appellant by D.W.1 for security purpose and it has

been misused by the appellant.

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 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-*
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> *(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 cheques in question were 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.20 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.

16. Moreso, the respondent has also spoken about the disputed cheques to have been issued only for security towards previous debt and not towards the alleged debt. However, there is no whipser about the said transaction either in the complaint or in the legal notice issued by the complainant. Hence, the trial Court has acquitted the accused from the charges leveled against him u/s.138 and 142 of the Act.

17. 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.

18. 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.

19. When the appellant has not established that there exists a legally enforceable debt, which has to be paid by the respondent for which the cheques were issued, which has since been dishonoured, the mere dishonour of the cheques alone cannot form the basis to attract Section 138 of the Act, more so, when it is the case of the respondent that the cheques, which were given for security purpose have been misused cannot be brushed aside.

20. To take shelter under the presumption provided for u/s 139 of the Act, the appellant has to first establish that the cheques were 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 cheques were issued, which could be presumed.

21. For the reasons aforesaid, the impugned order 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 S.T.C.No.115 of 2011 on the file of the learned Judicial Magistrate (Fast Track Court), Dharmapuri, dated 30.08.2013 is confirmed.

24.07.2024

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

The Judicial Magistrate, Fast Track Court, Dharmapuri

M.DHANDAPANI, J.

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