



Crl.A.No.384 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.384 of 2018

K.Shankar

... Appellant

Vs.

R.Prakash

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 16.02.2018 passed in C.A.No.9/2017 by the Additional District and Sessions Judge, Dharmapuri, reversing the judgement and orders dated 20.01.2017 passed in C.C.No.10/2016 by the Judicial Magistrate, Fast Track Court, Dharmapuri.

For Appellant : Mr.C.R.Malarvannan

For Respondent : Mr.K.Ethirajalu

Legal Aid Counsel



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JUDGMENT

Challenging the order of acquittal dated 16.02.2018 passed in C.A.No.9/2017 by the Additional District and Sessions Judge, Dharmapuri, the present appeal is filed by the appellant / complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The case of the appellant / complainant in a nutshell is as follows :

3.1. The complainant is working in Rajammal Modern Rice Mill and the respondent / accused is known to him. The accused borrowed a sum of Rs.6,50,000/- from the complainant to meet his urgent family requirement and also assured to repay the same within one or two months.



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3.2. In order to discharge the debt, the accused issued a cheque bearing number 989342 dated 27.02.2015 (Ex.P1) for a sum of Rs.6,50,000/- drawn on Syndicate Bank, Krishnagiri Branch, in favour of the complainant.

3.3. When the complainant presented the cheque for collection through his bankers, viz., Tamilnadu Mercantile Bank, Dharmapuri Branch, it was returned for the reason “Funds Insufficient” as is seen from the cheque Return Memo dated 23.05.2015 (Ex.P2).

3.4. Thereafter, the complainant issued a statutory notice dated 02.06.2015 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within fifteen days from the date of receipt of the notice.

3.5. Though the accused received the statutory notice on 04.06.2015 as is evidenced by the postal acknowledgement card (Ex.P4), he did not come forward to make good the payment. He did not also send any reply to the statutory notice.



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3.6. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Dharmapuri, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of Negotiable Instruments Act (in short N.I. Act) in C.C.No.10/2016.

3.7. The learned Judicial Magistrate, Fast Track Court, Dharmapuri, took cognizance of the offence under Section 138 of the N.I. Act and issued summons to the accused under Section 204 Cr.P.C.

3.8. On the appearance of the accused, copies of records were furnished to him under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since he pleaded not guilty, the case was posted for trial.

3.9. The complainant examined himself and marked Ex.P1 to Ex.P5.

3.10. The accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He



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examined himself as D.W.1. However, no documentary evidence was adduced on his side.

3.11. After full trial, the learned trial court judge, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of three months, vide his judgment and orders dated 20.01.2017.

3.12. Aggrieved over the same, the accused filed an appeal in C.A.No.9/2017 before the Additional District and Sessions Judge, Dharmapuri. The learned Additional District and Sessions Judge reversed the findings recorded by the trial court on the ground that the accused had filed an Insolvency Petition in I.P.No.1/2015 and that the accused had not adduced any evidence to show that whether the cheque (Ex.P1) was issued prior to the filing of insolvency petition or subsequent to that. The first appellate court also observed that in the absence of evidence in this regard, it has to be presumed that the cheque (Ex.P1) was presented after filing of the insolvency petition by the accused before the



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Principal Sub Court, Krishnagiri.

3.13. Aggrieved over the same, the present appeal is filed by the complainant.

4. Heard Mr.C.R.Malarvannan, learned counsel for the appellant and Mr.K.Ethirajalu, learned Legal Aid Counsel for the respondent.

5. Mr.C.R.Malarvannan, learned counsel for the appellant would contend that the accused had not denied his signature on the cheque (Ex.P1) and did not also choose to send any reply to the statutory notice (Ex.P3) issued by the complainant. According to him, the trial court had properly analysed the evidence on record and the lower appellate court acquitted the accused only on the ground that the complainant had not adduced any evidence to show that the cheque (Ex.P1) was issued prior to the filing of insolvency petition in I.P.No.1/2015 or subsequent to that. He showed online status report of Principal Sub Court, Krishnagiri, to show that I.P.No.1/2015 was



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presented before the Principal Sub Court, Krishnagiri, on 25.09.2015. He would therefore contend that the order of acquittal passed by the lower appellate court cannot be sustained.

6. Per contra Mr.K.Ethirajalu, learned Legal Aid Counsel for the respondent would contend that since the complainant had not adduced sufficient evidence to show that the cheque (Ex.P1) was issued prior to the insolvency proceedings the appellate court was right in acquitting the accused. Therefore, he prayed for dismissal of the present appeal.

7. A perusal of the records shows that the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. In the instant case, the accused had not adduced any evidence to rebut the presumption and the trial court judge had in fact gone into this aspect and had concluded that the accused is guilty of the offence punishable under



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Section 138 of N.I. Act. In the trial court, the defence taken by the accused was that there was a chit transaction between him and the complainant and the cheque (Ex.P1) was issued only as a 'security'. No evidence was let in by the accused to substantiate his contention in this regard. He did not also issue any notice to the complainant to return the cheque to him even after receipt of statutory notice (Ex.P3).

8. In these circumstances, the conviction and sentence passed by the trial court judge is absolutely in order and on the other hand, the appellate court had committed an error. The lower appellate court could have called for records from the Principal Sub Court to ascertain the date of presentation of I.P.No.1/2015. This court also verified online status report which clearly shows that I.P.No.1/2015 was filed before Principal Sub Court, Krishnagiri on 25.09.2015. It is relevant to note that the cheque (Ex.P1) in the instant case is dated 27.02.2015 and it was presented for collection on 23.05.2015. Therefore, the order of acquittal passed by the appellate court is liable to be set aside. The accused is found guilty of the offence under Section 138 of N.I. Act and sentenced to



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undergo simple imprisonment for one year and to pay a fine of R.5,000/-, in default, to undergo simple imprisonment for a period of three months.

9. In the result, the Criminal Appeal is allowed.

- i. The judgment and orders dated 16.02.2018 passed in C.A.No.9/2017 by the Additional District and Sessions Judge, Dharmapuri, is set aside.
- ii. The accused is found guilty of the offence under Section 138 of N.I. Act and sentenced to undergo simple imprisonment for one year and to pay a fine of R.5,000/-, in default, to undergo simple imprisonment for a period of three months.
- iii. The accused shall surrender before the Judicial Magistrate, Fast Track Court, Dharmapuri, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure him for undergoing the period of sentence.



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iv. This Court places on record its appreciation to Mr.K.Ethirajalu, learned Legal Aid counsel, for his valuable assistance in deciding this case. The Legal Service Authority is directed to pay fee to the said counsel, as per rules.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

mtl

To

- 1.The Additional District and Sessions Judge, Dharmapuri.
- 2.The Judicial Magistrate, Fast Track Court, Dharmapuri.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Section Officer, Criminal Section, Madras High Court, Chennai.

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