IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.332 of 2024

R.Rajendran ... Appellant

Vs.

Dr.M.Balamurugan ... Respondent

PRAYER: Criminal Appeal filed under Section 378(4) of Code of Criminal Procedure, to set-aside the order of acquittal of the respondent/accused in C.C.No.530 of 2016 on the file of the Fast Track Court No.I, Judicial Magistrate, Coimbatore, Old C.C.No.815 of 2015 on the file of the Judicial Magistrate No.II, Coimbatore dated 12.01.2024.

For Appellant	:	Mr.Joseph.I
For Respondent	:	Ms.K.Anusuya, Legal Aid Counsel

JUDGMENT

The appellant as a complainant filed private complaint under Section 138 of the Negotiable Instruments Act, 1881 (In short 'The Act') against the respondent in C.C.No.530 of 2016 (Old C.C.No.815 of 2015 on the file of the Judicial Magistrate No.II, Coimbatore) before the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore/Trial Court and the same was dismissed *vide* impugned judgment, dated 12.01.2024 acquitting the respondent from the case. Against which, the present criminal appeal is filed.

2.Gist of the complaint is that the appellant and the respondent are friends, on 10.04.2012 the respondent met the appellant, expressed his financial trouble in his family and requested to lend loan for a sum of Rs.8,00,000/- and agreed to repay the same with interest. Trusting the respondent, the appellant gave loan for a short term on 10.04.2012. After obtaining the loan, within a short period the loan could not be repaid despite the appellant made several request to the respondent for repayment. After a long time, the respondent executed promissory note (Ex.P1) for the loan taken with interest on 09.03.2015 and issued cheque drawn on HDFC Bank, Coimbatore. When the cheque was presented on 09.03.2015, the same was returned on 12.03.2015 for the reason "funds insufficient". Thereafter, the appellant sent legal notice, dated 19.03.2015 to the respondent demanding repayment. The respondent received the notice on 20.03.2015 but failed to make the payment. On the other hand, the respondent sent belated reply notice with false allegation, for which, rejoinder sent. Hence, the private complaint filed.

3.During trial, on the side of the appellant/complainant, he examined himself as PW1 and marked eight documents as Exs.P1 to P8. On the side of the defence/respondent, he examined himself as DW1 and marked two documents are Exs.D1 & D2. On completion of trial, the Trial Court dismissed the complaint acquitting the respondent as stated above.

4.The learned counsel for the appellant/complainant submitted that the Trial Court failed to consider the explanation given for wrongly mentioning the cheque number in the statutory notice and in the complaint. The Trial Court failed to consider the reason given in the proof affidavit for mentioning wrong cheque number. The respondent not raised any objection and shown any prejudice due to the mistake committed by the appellant. In the cheque (Ex.P2), both the numbers 000032 and 000739 are available. Instead of giving the cheque number, the other number which is available mentioned in the statutory notice. In this case, there is no dispute with regard to drawer of the cheque, bank details, amount filled up and the signature in the cheque. As regards the liability of Rs.8,00,000/- is only disputed and not on the cheque number. In such circumstances, the Trial Court taking difference in the cheque number and giving benefit of doubt to the respondent is not proper. He further submitted that the Trial Court failed to consider that once the signature in the cheque not denied, the statutory presumption under Sections 118 and 139 of the Act comes into play and it is for the Drawer of the cheque to give explanation and probabilize the cheque is not issued in discharge of any liability. Finding of the Trial Court is that in the complaint and statutory notice, there is no reference to the other transaction, but during cross examination the appellant admits about other transaction of Rs.2,00,000/- when a question put to him. Hence, it is a suppression of fact, is not proper. For the other transaction of Rs.2,00,000/- the amount was given in cheque, there is no reason for handing over of Rs.8,00,000/- in cash. This reasoning of the Trial Court is also not proper. From 10.04.2012 to 02.09.2012 when the respondent not repaid the loan already taken, the appellant giving another loan of Rs.8,00,000/- is unbelievable. The appellant proved the fact that he had sufficient cash in hand by producing the bank statement (Ex.P8) wherein on 10.04.2012 the appellant had withdrawn Rs.7,50,000/- from his bank account. Adding Rs.50,000/- with Rs.7,50,000/-, the appellant gave loan of Rs.8,00,000/- to the respondent. The respondent not denied about execution of promissory note (Ex.P1). Thus, the cheque (Ex.P2) and promissory note (Ex.P1) proved the transaction and liability of the respondent. The respondent has not shown any proof of liability and not given proper explanation, but the Trial Court on technicality of mentioning wrong cheque number dismissed the complaint. Hence, he prayed for setting aside the judgment of the Trial Court.

5.The learned counsel for the respondent submitted that the respondent borrowed a sum of Rs.2,00,000/- from the appellant on 02.09.2012, at that time, blank signed cheque and promissory notice handed over to the appellant as security. This was filled up and false case alleging that the respondent borrowed a sum of Rs.8,00,000/- on 10.04.2012 is projected. She further submitted this transaction not referred in the statutory notice (Ex.P4). The appellant/PW1 further reaffirms that except for the transaction pertaining to Rs.8,00,000/-, there is no other transaction with the respondent which is contrary to the rejoinder (Ex.P7). Later, PW1 admits that there is other transaction of Rs.2,00,000/- between them which was by way of cheque and bank transaction on 02.09.2012. The respondent discharged the amount of Rs.2,00,000/- is also admitted. The alleged loan amount of Rs.8,00,000/- which said to have given on 10.04.2012 by way of cash stands falsified for the simple reason that the cheque said to have issued for a transaction took place on 10.04.2012 when already a loan transaction which is due there is no reason why a second loan of Rs.2,00,000/- has been paid that too by way of cheque on 02.09.2012. The cheque (Ex.P2) came to be issued on 09.03.2015 which only probabilized the respondent's defence that security cheque which was given for other transaction of Rs.2,00,000/- filled up without any authority.

6.She further submitted that the respondent got into the box and confirmed in his evidence about the only one transaction of Rs.2,00,000/- which has been discharged. It is further raised that on 09.03.2015, the respondent and his wife were visiting Maruthamalai Temple, in proof of the same, Ex.D2 marked. Likewise, Ex.D1 marked to confirm that on 09.01.2015 the appellant along with henchmen entered the respondent's clinic and threatened him, for which a complaint was given to Vadavalli Police Station and CSR.No.11 of 2015 assigned. Added to it, the appellant admits that he referred to a wrong cheque number in the statutory notice as well as in the complaint and thereafter given explanation and corrected the same in the proof affidavit. The Trial Court ought not to have taken cognizance of the complaint when the fundamental mistake committed by mentioning the wrong cheque number and the statutory notice refers different cheque number. The Trial Court considering the cross examination of the appellant and the respondent getting into the box as DW1 giving evidence and marking Exs.D1 & D2, had found issuance of the cheque of Rs.8,00,000/-, dated 09.03.2015 is not for discharge of any legally sustainable liability and dismissed the complaint. She further submitted that Higher Court on reappraisal of the evidence finds that though two views possible then to adopt the view taken by the Trial Court unless until it is proved to be perverse and a gross mistake committed. In this case, it is not so. Hence, prays for dismissal of the appeal.

7.This Court considered the rival submissions and perused the materials available on record.

8.The appellant projected the complaint that he and the respondent are close friends. The respondent being a Doctor sought financial assistance from the appellant to tide over the difficult situation. Trusting the words, the appellant gave loan of Rs.8,00,000/- on 10.04.2012. On that day, the respondent said to have handed over the cheque (Ex.P1) and later the promissory note (Ex.P2) in the year 2015. In the statutory notice, the appellant not mentioned about the earlier transaction of Rs.2,00,000/- given to the respondent by way of cheque drawn on Indian Bank on 02.09.2012. The repayment of loan of Rs.2,00,000/- not disputed and confirmed by the appellant. When the other loan, dated 10.04.2012 of Rs.8,00,000/- is pending neither paid the interest nor repaid the principal, no prudent person would subsequently extend another loan. Thus, the respondent probabilized the defence that a blank cheque which was received for other loan of Rs.2,00,000/- filled up and case projected based on Ex.P2, gains credence since the cheque of Rs.8,00,000/- said to have been issued on 09.03.2015 three years later.

9.It is seen that the respondent lodged a Police complaint against the appellant for trespassing into the respondent's clinic and threatening him to repay the loan amount. On complaint, CSR.No.11 of 2015 assigned and the same marked as Ex.D1. After the reply of the respondent, the reply with regard to other loan of Rs.2,00,000/- referred is admitted. But the appellant failed to give any explanation for trespassing and threatening the respondent on 07.01.2015 and the Police complaint at Vadavalli Police Station. The appellant after cross examination finding hollowness, recalled himself and marked Ex.P8 to show that on 10.04.2012, the appellant had withdrawn Rs.7,50,000/- from his bank account and adding up with another Rs.50,000/-, he gave loan of Rs.8,00,000/- by cash. It is unable to reason out that when Rs.2,00,000/- given by way of cheque, how come Rs.8,00,000/- by cash. The Trial Court considered the evidence and materials on both sides rightly dismissed the complaint which needs no interference of this Court.

10.In view of the above, this Court is not inclined to interfere with the judgment of acquittal, dated 12.01.2024 in C.C.No.530 of 2016 passed by the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore and the same is hereby affirmed. Accordingly, this criminal appeal stands dismissed.

11.This Court appreciates Ms.K.Anusuya, Legal Aid Counsel for her strenuous efforts and marshalling the facts and opposing the appellant.

06.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

The Judicial Magistrate,
Fast Track Court No.I,
Coimbatore.

M.NIRMAL KUMAR, J.

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