IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM:

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

Crl.A.No.250 of 2021

P.Selvam ... Appellant

Vs.

N.Chandira Sekaran ... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, to call for the records in connection with STC.No.177/2018 on the file of the learned Judicial Magistrate, FTC, Attur, Salem District and set aside the judgment dated 07.01.2021.

For Appellant : Mr.B.Kannadasan
For Respondent : Mr.Ali Hasan Khan

JUDGMENT

The appeal has been filed seeking to quash the acquittal order in STC.No.177/2018 on the file of the learned Judicial Magistrate, FTC, Attur, Salem District and set aside the judgment dated 07.01.2021.

2. The facts of the case are as follows:

It is the case of the complainant that the respondent has borrowed a sum of Rs.10,00,000/- on 07.12.2017 for his family needs. Towards the discharge of the said loan amount, it is the case of the complainant that the respondent has issued post dated cheque bearing No.000278 dated 18.01.2018 for a sum of Rs.10/- lakhs. Since the respondent did not repay the loan amount, the complainant presented the cheque before the Bank for encashment of the amount. However, the said cheque was returned with an endorsement "Account closed". Hence, the appellant gave a statutory notice to the respondent/accused on 15.02.2018 seeking for repayment of the loan amount. The respondent has sent a reply on 20.02.2018 with false averments and not paid the amount. Hence, the appellant has filed a complaint before the learned Judicial Magistrate under Section 138 of NI Act which was taken on file in STC. No.177 of 2018.

3. In order to prove the case, before the trial Court, the appellant has examined himself as PW1 and marked 9 documents viz., Ex.P1 to P9. On the side of the respondents, three witnesses and three documents were marked. After ful-fledged trial, the learned Judge dismissed the case and acquitted the respondent. Aggrieved by the said acquittal judgment, the complainant/appellant has preferred this appeal.

4. The learned counsel appearing for the appellant vehemently argued that admittedly, the respondent borrowed the amount as hand loan. The trial Judge ought not to have disbelieved the case of the complainant. The complainant has produced all materials records and his oral evidence is crystal clear as to the borrowing of the loan by the respondent and non repayment of the same. The respondent has agreed that he would repay the entire loan amount within a very short period. However, the respondent did not repay either the principle amount or interest thereof. Therefore, the complainant made use of those cheque given by the respondent and presented the same for collection. However, the said cheques were dishonored. Therefore, the complainant has issued Statutory notice, even after receipt of the said notice, the respondent has failed to honour his commitment. Therefore, the complainant was forced to approach the Judicial Magistrate with the present complaint. The learned trial court, without appreciating the material facts, has dismissed the case of the complainant, which is not sustainable.

5. The learned counsel appearing for the appellant submitted that his son have studied in the respondents polytechnic college. In view of the above, the appelland and the respondent have known each other for pass years. For

family expenses and business development, the respondent has borrowed Rs.10 lakhs from the appellant, for which, he has issued the post dated cheque. However, the respondent has denied the issuance of the instrument. In the reply notice/Ex.P6, the respondent has stated that the said cheque was stolen much earlier. If the cheque has been stolen, he must have filed a complaint or public notice. Without doing this, the respondent has taken a stand that the cheque was stolen which is not sustainable one.

6. It is the further submission of the learned counsel that the appellant has clearly established that the respondent has delibarately refused to settle the amount, which is not sustainable. 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.

7. Per contra, the learned counsel for the respondent submitted that the respondent has examined three witnesses DW1 to 3. Before the trial Court, during examination, DW2/respondent's Bank Manger has stated that the respondents cheque bearing No.000278 was honoured on 29.03.2014 and

subsequently cheque bearing No.000279 was honoured on 14.10.2014 and other cheques were honoured in the year 2014 itself. The respondent has clearly proved that the cheque falls in the year 2014 and the Ex.P1 was misused in the year 2018 by the appellant. The said fact has been clearly established before the trial Court. The learned Judge has drawn into threadbare and has clearly brought out the falsehood of the case of the complainant. The trial Judge has given cogent and convincing reasons for disbelieving the case of the complainant.

8. Heard the learned counsel for the appellant as well as the respondent and perused the materials available on record.

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 [Chandrappa v. 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 an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon 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 own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "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 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. "

10. 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.

11. 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, in blank, was denied by the respondent and the relationship between the appellant and respondent has also not proved before the trial Court.

12. 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 unpaid either 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 an offence 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 the drawer 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."

13. The complainant 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.

14. The court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheque was claimed to have been misused by the appellant, however, there are no materials to show that such is the case. The court below has held, the appellant has not proved his case beyond reasonable doubt, and the cheque was

not issued for discharging legally enforceable debt.

15. In this backdrop, it is the duty of the appellant to establish that the cheque was issued for discharging legally enforceable debt. Though the appellant has examined as P.W.s 1 and he has stated that the respondent has borrowed the amount from him for which the respondent has issued a cheque and the same was dishonored. However, the respondent has clearly proved that the cheque was misused by the appellant through the evidence of the Bank Manager.

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. In the case on hand, during the cross examination through the evidence and materials, the appellant has not established that the respondent has borrowed money from the appellant and the respondent has established that the cheque was misused by the appellant. The said finding has been clearly found out by the trial Court and hence, the complaint was rejected.

17. 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 not given for the present transaction and it has been misused by the appellant.

18. 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 and hence, the appellant cannot enforce Section 138 and the rigours of Section 139 of the Act would not stand attracted to the case on hand.

19. Under these circumstances, this Court finds that the respondent has rebutted the presumption by preponderance of probabilities by way of cross examination of the appellant. The trial Court rightly re-appreciated the entire

evidence independently and came to the conclusion that the respondent has not committed the offence under Section 138 of NI Act and rightly dismissed the case.

20. On reading of the entire evidence, it is seen that the respondent has admitted the execution of the cheque and he has rebutted the statutory presumption in the manner known to law. This Court, does not find any perversity in the judgment passed by the learned trial Court in STC. No.177/2018 dated 07.01.2021 and there is no compelled circumstances to interfere with the judgment.

21. Accordingly, this Criminal Appeal is dismissed.

05.07.2024

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Index:Yes/No
Speaking/Non speaking order
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To
The Judicial Magistrate, FTC, Attur.

M.DHANDAPANI.J,

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