IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
30.04.2024	03.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.817 OF 2022

V.Vijayakumar .. Appellant

- Vs -

Mrs. Rani Sivagami .. Respondent

Criminal Appeal filed u/s 374 (2) Cr.P.C. praying this Court to set aside the judgment passed in S.T.C. No.871 of 2016 by the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, Thiruvallur District, on 6.12.2021 and to convict the respondent/accused.

For Appellant : Mr. N.Kumanan

For Respondents : No Appearance

JUDGMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in S.T.C. No.171/2016 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, dated 6.12.2021, 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 family friends and between 2009 and 2013, the appellant had advanced hand loans to the tune of Rs.15,00,000/- for which the respondent had agreed to repay the same with interest at 12% per annum. The loans were availed by the respondent for urgent family needs and also towards educational expenses of her son. The last of the said hand loan was given during the month of December, 2013 and when the appellant insisted for repayment of the same, the respondent had agreed to repay the same along with a lumpsum interest of Rs.3,00,000/- instead of 12% per annum and in total a sum of Rs.18,00,000/- was agreed to be repaid by the respondent. Towards the discharge of the entire liability, the respondent issued two post dated cheques bearing No.832306 for Rs.9,00,000/- dated 27.08.2015 and another cheque bearing No.832310 for

Rs.9,00,000/- dated 03.09.2015 both drawn on State Bank of India, Gudalur Branch.

3. It is the further case of the appellant that at the time of issuance of the said cheques, the respondent promised that the said cheques would be honoured and believing the said assurance, when the appellant presented the first cheque bearing No.832306 dated 27.08.2015 to his banker, the same was returned with an endorsement “Funds Insufficient” and “Drawers Signature incomplete/illegible/differs” vide return memo dated 29.08.2015. When the appellant tried to contact the respondent, there she deliberately avoided. Thereafter, the appellant presented the second cheque bearing No.832310 dated 3.9.2015, which was also returned with endorsement “Funds Insufficient”, vide return memo dated 3.9.2015. It is the further case of the appellant that the act of the respondent to give the cheques along with an illegible signature was a deliberate act to defraud the appellant and, therefore, the appellant caused a legal notice u/s 138 of the Act on 23.9.2015 which was received on 26.9.2015, but the respondent has not repaid the amount, necessitating the complaint filed by the appellant.

4. 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.

5. On the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-6. On the side of the respondent, the respondent examined herself as D.W.1, however no documents were marked on the side of the respondent. The trial court, appreciating the materials available on record, held that the appellant has not established that the dishonoured cheques were issued for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that the cheques were issued by the respondent, which stood dishonoured and the notice sent by the appellant to the respondent u/s 138 of the Act did not evince any reply from the respondent, which clearly shows that she has not denied her

liability. It is the further submission of the learned counsel that though the respondent had denied her signature in Ex.P-1, however, she has not denied her signature in Ex.P-2, which cheque was dishonoured and returned with endorsement “Funds Insufficient”. Therefore, the dishonour of Ex.P-2 would definitely attract all the ingredients of Section 139 of the Act. It is the further submission of the learned counsel that though the respondent claims that the cheques were lost, yet no complaint was made to the law enforcing agency to set the criminal law in motion, which clearly shows that the stand taken by the respondent is only to deny the legal right of the appellant. It is the further submission of the learned counsel that the respondent in cross examination had admitted that she had made part payment to the appellant towards the debt, but the court below had given a finding that no such recording is there in the note file with regard to the payment alleged to have been made by the respondent to the appellant. It is therefore the contention of the learned counsel that the court below has miserably failed to consider the evidence in proper perspective and, therefore the order passed by the court below requires interference at the hands of this Court.

7. Inspite of issue of notice, the respondent has not chosen to appear. However, 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.

8. 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) <u>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</u>.

(5) <u>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</u>."

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. <u>The acquittal of the accused further strengthens the presumption of innocence</u>;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. <u>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</u>;

8.4. <u>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</u>; 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)

9. 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. Exs.P-1 and P-2 are the two cheques, which are alleged to have been issued by the respondent towards discharge of the liability to the appellant. However, there is no material to show as to when the loans were given to the respondent by the appellant and the dates on which they were given.

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 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 respondents to prove that the respective cheques, which are the subject matter of the present appeal were 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. 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 though the cheques were dishonoured, however, there is no material placed by the appellant to show that it was towards the discharge of a legally enforceable debt.

15. A careful perusal of the order passed by the court below reveals that the court below has taken into consideration the deposition of D.W.1, where D.W.1 has denied not only about her signature in the cheque, Ex.P-1, but also has clearly deposed that she has not received any loan from the appellant.

16. 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 loans 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.

17. However, it is seen from the evidence of P.W.1, which has been discussed by the court below that the loans were alleged to have been given to the respondent at Koyambedu market. In fact, it is not a single transaction, but multiple transactions and all the transactions are stated to have been performed at Koyambedu market, including the alleged issuance of the cheques by the respondent. The court below has mused about the fact that though it is claimed that the appellant and the respondent are family friends, yet all the alleged loan transactions are claimed to have taken place at Koyambedu market.

18. Further, barring the above, it is to be pointed out that there are no details as to the various dates on which the loans were given and how the amount of Rs.15,00,000/- has been arrived at as the total loan given by the appellant to the respondent. In the absence of any material to show the details of the loans given to the respondent on various dates, no presumption can be made that the claim of Rs.15,00,000/- by the appellant is a legally enforceable debt, which has to be discharged by the respondent, towards which the cheques were alleged to have been issued.

19. In the absence of any material to show the details of the loans given to the respondent, including the break up of the loans given on various dates by the appellant to the respondent, the mere dishonour of the cheques cannot be said to have been issued by the respondent towards a legally enforceable debt.

20. Further, in the case on hand, though the first cheque was dishonoured on 29.08.2015 for insufficient funds, however, without ascertaining any details from the respondent the second cheque was presented on 3.9.2015, which was also dishonoured on the very same day. As held by the Apex Court, the dishonour of the cheque alone cannot be the criteria to invoke Section 138 of the Act, but the cheque, which stood dishonoured should be against a legally enforceable debt. However, as stated above, there are no materials to show that the amount, which is shown in the cheque is a legally enforceable debt, as no material is there on record to show the loans, which have been given by the appellant to the respondent, more specifically, there is a specific denial of such loans having been taken by the respondent. Therefore, the appellant has not

established that the cheques were issued for discharging a legally enforceable debt.

21. Therefore unless the appellant discharges his burden by giving the details with regard to loan taken and the dates on which they were given to the respondent, placing the cheques, which are alleged to have been dishonoured, and is alleged to have been given by the respondent cannot be the basis to hold that a case u/s 138 of the Act is made out.

22. For the reasons aforesaid, the impugned order passed by the court below does not deserve any interference and the same stands affirmed. Accordingly, all the appeal fails and the same is dismissed.

03.06.2024

Index : Yes / No
GLN

To

The Judicial Magistrate

Fast Track Court
(Magisterial Level)
Ambattur.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
CRL. A. NO.817 OF 2022

Pronounced on

03.06.2024