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Crl.A.No.486 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2024

CORAM

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

Crl.A.No.486 of 2018

Murugesan

... Appellant

Vs.

S.Subramaniam

... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973 against the judgement and orders dated 25.06.2018 passed in Crl.A.No.39 of 2018 by the II Additional District and Sessions Judge, Erode reversing the Judgment dated 18.01.2018 made in C.C.No.519 of 2008, by the learned Judicial Magistrate No.1, Erode.

For Appellant : Ms.S.Yogalakshmi

For Respondent : Mr.D.Selvaraju

JUDGMENT

Challenging the order of acquittal dated 25.06.2018 passed by the II Additional District and Sessions Judge, Erode in Crl.A.No.39 of 2018, the present appeal is filed by the complainant.



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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 accused borrowed a sum of Rs.1,90,000/- from the complainant on 14.10.2007 and handed over the following cheques (Ex.P1 to Ex.P3)

<i>Serial No.</i>	<i>Cheque Number</i>	<i>Date</i>	<i>Amount</i>	<i>Exhibit</i>	<i>Bank in which drawn</i>
1	438360	17.11.2007	Rs.1,10,000/-	Ex.P1	Indian Overseas Bank, Sampath Nagar Branch, Erode.
2	814345	25.11.2007	Rs.40,000/-	Ex.P2	Indian Overseas Bank, Sampath Nagar Branch, Erode.
3	814346	27.11.2007	Rs.40,000/-	Ex.P3	Indian Overseas Bank, Sampath Nagar Branch, Erode.

3.2 When the complainant presented the cheques (Ex.P1 to Ex.P3) for collection through his bankers viz., Indian Overseas Bank,



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Sampath Nagar Branch, Erode on 15.05.2008, they were returned for the reason “Insufficient Funds” on 16.05.2008 as is evidenced by the cheque return memos (Ex.P4 to Ex.P6).

3.3 Thereafter, the complainant issued a statutory notice (Ex.P7) dated 11.06.2008 to the accused calling upon him to pay the amount due under the cheques (Ex.P1 to Ex.P3) within fifteen days from the date of receipt of the notice.

3.4 The accused received the said notice as is evidenced by the postal receipt (Ex.P8) and Postal Acknowledgment Card (Ex.P9). However, he did not come forward to make good the payment but sent a reply notice, which, according to the complainant, contained false allegations.

3.5 Therefore, the complainant filed a private complaint before the Judicial Magistrate No.1, Erode, under Section 200 Cr.P.C against the accused for an offence punishable under Section 138 of the



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Negotiable Instruments Act (in short N.I. Act) in C.C.No.519/2008.

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

3.7 On the appearance of the accused, the 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.

3.8. The complainant examined himself and marked Ex.P1 to Ex.P10.

3.9. 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 examined himself and one another witness and marked Ex.R1 to Ex.R3.



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The handwriting expert was also examined and her reports were marked as Ex.C1 to Ex.C3.

3.10. The learned Trial Court Judge, after analysing the oral and documentary evidence on record, convicted the accused for the offence punishable under Section 138 of N.I. 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 her Judgment and orders dated 18.01.2018.

3.11 Aggrieved over the same, the accused filed an appeal in Crl.A.No.39/2018 before the II Additional District and Sessions Judge, Erode.

3.12 The learned II Additional District and Sessions Judge, after analyzing the evidence on record set aside the conviction and sentence passed by the Trial Court and acquitted the accused under Section 255 (1) Cr.P.C. Aggrieved over the same, the present appeal is



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filed by the complainant.

4. Heard Ms.S.Yogalakshmi, learned counsel appearing for the appellant and Mr.D.Selvaraju, learned counsel appearing for the respondent.

5. Ms.S.Yogalakshmi, learned counsel appearing for the appellant contended that the Lower Appellate Court had committed an error in acquitting the accused on the ground that the complainant (P.W.1) though had averred in his complaint that the accused handed over three cheques to him had contradicted his own version during the course of cross examination by deposing that the accused handed over four cheques to him. It was also observed that the complainant did not adduce any evidence to show that he had sufficient means to finance the accused.

6. Per Contra, Mr.D.Selvaraju, learned counsel appearing for the respondent/accused relied on the decisions in (i) ***M.S.Narayana***



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Menon Alias Mani Vs State of Kerala and another reported in (2006) 6 SCC 39 and (ii) ***Krishna Janardhan Bhat Vs. Dattatraya G.Hegde*** reported in AIR 2008 SCC 1325 and contended that the presumption under Section 139 of Negotiable Instruments Act extends only to the extent that the holder of the cheque received the cheque for the discharge in whole or in part of any debt or other liability and the Court cannot presume any legally enforceable debt. It was also contended by him that in a criminal case, unless the complainant proves his case, the innocence of the accused has to be presumed. According to him, the complainant had not produced the statement of accounts to show that the accused has to repay a sum of Rs.1,90,000/- and therefore, the appellate court was right in acquitting the accused for the offence under Section 138 of the N.I. Act.

7. It is pertinent to point out that the accused had not denied his signatures on the cheques Ex.P1 to Ex.P3. Once the signature is admitted, there is a presumption under Sections 118 and 139 of N.I.Act, unless the contrary is proved.



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8. In the instant case, though it is stated by both the complainant and the accused that the accused sent a reply notice, a copy of the same was not filed by either parties. Since it was suggested to the complainant (P.W.1) during the course of cross examination that there was a material alteration on the cheques, the Trial Court sent all the cheques to the hand writing expert. Tmt.Vasantha Sundari (C.W.1), the Hand writing Expert had, in her report (Ex.C1 to Ex.C3) as well as in her deposition stated that the signatures found on the cheques are that of the accused.

9. According to the accused, he used to borrow loan from the complainant since both of them were working in the same college and would hand over signed blank cheques to him and that the complainant did not return those signed blank cheques even though he repaid the entire loan amount. However, the accused during the course of cross examination had deposed that on 01.11.2007, the complainant met him and informed him that he has to pay a sum of Rs.20,000/- to him for



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which, the accused requested the complainant to fill up the cheques which he had already handed over to him. Subsequently, on 17.11.2007, he issued two cheques bearing Nos.438359 and 438360 for a sum of Rs.20,000/- since the complainant told him that he misplaced the blank cheques. This deposition of the accused is totally in contradiction to his version that the complainant misused his signed blank cheques and filed the complaint.

10. The proceedings under Section 138 of N.I. Act are quasi civil proceedings having penal consequences. It cannot be treated like any other criminal cases where the prosecution has to prove the guilt of the accused beyond reasonable doubts. The initial presumption under Section 118 and 139 of N.I. Act is in favour of the complainant once the signature on the cheque is admitted and the burden of proof lies on the accused to rebut the presumption. In the instant case, the accused has not adduced any acceptable evidence to rebut the presumption. On the other hand, the complainant has proved his case by pressing into service the cheques duly signed by the accused. The accused also did not deny his



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signatures on the cheques. The handwriting expert (R.W.1) in her reports (Ex.C1 to Ex.C3) had opined that the signatures on the cheques are that of the accused. The lower appellate court had completely erred in coming to a conclusion that the accused is not guilty of the offence under Section 138 of N.I. Act only on the ground that the complainant during the course of cross examination had deposed that the accused handed over four cheques to him. It is pertinent to point out that the complainant in his legal notice, complaint and in his chief examination (proof affidavit) had clearly indicated that the accused handed over three cheques to him. Therefore, the finding of the lower appellate court is perverse.

11. As regards the contention that the complainant did not adduce any records to show that he lent a sum of Rs.1,90,000/- to the accused, it is to be pointed out that the complainant is not a professional money lender. He had given hand loans to the accused since he happened to work with him in the same college. It is admitted that the complainant is a professor of the college and the accused is a clerk. When it is contended by the accused that he repaid the entire loan amount and that



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the complainant did not return the blank cheques to him, it is not known as to why he did not initiate any action against the complainant for getting back the cheques. He did not also issue any notice to him in this regard.

12. In the circumstances, the Judgment and orders passed by the Lower Appellate Court is liable to be set aside and the accused is found guilty of the offence punishable under Section 138 of N.I. Act. and sentenced to undergo simple imprisonment for a period of one year and to pay compensation of Rs.1,90,000/- to the complainant, in default, to undergo simple imprisonment for a period of three months.

13. In the result,

- i. the Criminal Appeal is allowed.
- ii. the judgment dated 25.06.2018 passed in C.A.No.39/2018 by the Additional District and Sessions Judge, Erode, is set aside.
- iii. the accused is found guilty of the offence under Section 138 of N.I. Act and sentenced to undergo simple imprisonment for a



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period of one year and to pay compensation of Rs.1,90,000/- to the complainant, in default, to undergo simple imprisonment for a period of three months.

iv. the accused shall surrender before the Judicial Magistrate No.1, Erode, within fifteen 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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Index : yes/no
Speaking /Non speaking Order
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To

- 1.The II Additional District and Sessions Judge,
Erode.
2. The Judicial Magistrate No.1,
Erode.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer,
Criminal Section,
Madras High Court,
Chennai.



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R. HEMALATHA, J.

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