IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A. No.309 of 2015

S. Kalyanaraman
S/o. Subramanian ...Appellant

Vs.

1. Sathish Chandar

2. M/s. SRK Traders
Represented by the Proprietor
Sathish Chandar,
S/o. Sethuraman,
35/122, Eda Street,
Koranadu, Mayiladuthirai ...Respondents

Prayer : Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the judgment and orders dated 17.10.2014 passed in C.C No.208 of 2013 by the Judicial Magistrate, Fast Track Court , Mayiladuthurai.

For Appellant : Mr.C.S. Dhanasekaran

For Respondents : Mr.E. Chandrasekaran

JUDGMENT

Challenging the order of acquittal dated 17.10.2014 passed by the learned Judicial Magistrate, Fast Track Court, Mayiladuthurai, in C.C. No.208/2013, the present appeal is filed by the 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 rank in the present appeal would also be indicated.

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

3.1. The accused is known to the complainant through his paternal uncle Selvaraj. On an assurance given by the said Selvaraj, the complainant used to give hand loans to the accused from the year 2011. On 24.07.2013, the accused in order to liquidate the debt, issued a cheque (Ex.P1) bearing number 531127 drawn on Bank of Baroda, Mayiladuthurai Branch, for a sum of Rs.7,50,000/-.

3.2. When the complainant presented the cheque for collection on 29.07.2013 through his bankers, viz.,, Bank of India, Mayiladuthurai Branch, the same was returned on the same day with an endorsement 'Account Closed', as is seen from the cheque return memo (Ex.P2).

3.3. Thereafter, the complainant issued a statutory notice dated 12.08.2013 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque (Ex.P1) within a period of fifteen days from the date of receipt of the notice. The accused received the statutory notice on 14.08.2013, as is evidenced by the postal acknowledgement card (Ex.P4), and sent a reply notice (Ex.P5) dated 02.09.2013, which according to the complainant, contained false allegations.

3.4. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court, Mayiladuthirai, under Section 200 Cr.P.C. against the accused for an offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in C.C.No.208/2013.

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

3.6. 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.

3.7. On the side of the complainant, the complainant examined himself and one another witness and marked Ex.P1 to Ex.P5.

3.8. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He marked the statement of accounts of his Bank as Ex.D1.

3.9. The learned Judicial Magistrate, Fast Track Court, Mayiladuthurai, after analysing the evidence on record, found the accused not guilty of the offence punishable under Section 138 of NI Act and acquitted him under Section 255(1) Cr.P.C.

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

4. Heard Mr.C.S. Dhanasekaran, learned counsel for the appellant and Mr.E. Chandrasekaran, learned counsel for the respondents.

5. In the instant case, the accused had not denied his signature on the cheque Ex.P1. Once the cheque relates to the account of the accused and he accepts and admits the signature on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption mandated under Section 139 of NI Act

includes the existence of a legally enforceable debt or liability. In the instant case, the accused in his reply notice (Ex.P5) had requested the complainant to give the details of loan amount. Even after the receipt of this notice, the complainant had not chosen to send any rejoinder mentioning the dates on which he lent various amounts to the accused. Moreover, in the complaint nothing is stated with regard to the dates of advancing loan amount to the accused. During the course of cross examination, P.W.1 had deposed that he lent certain amount to the accused during June 2013. However, he could not remember the exact amount lent by him. He also admitted that he does not have any records or accounts to show that the accused actually has to repay a sum of Rs.7,50,000/- to him. The accused filed the statement of accounts of his bank, which shows that he paid various amounts to the complainant.

6. It is pertinent to point out that the complainant was working as a cashier in a Nationalised Bank and his evidence does not inspire the confidence of this Court. When the complainant states that he used to hand over receipts to the accused whenever payments are made and

would also return the cheques to him, the same has not been mentioned either in his complaint or in his proof affidavit. Another contention of the complainant was that he took money from ATM and paid the same to the accused. However, he did not file his bank statement to prove the same. As already observed, the complainant was working as a cashier and infact he had examined Thiru.Arumugam (P.W.2), Joint Branch Manager, Bank of Baroda, Mayiladuthurai Branch, to show that a sum of Rs.10,000/- was not credited to his account on 19.08.2011. The complainant could have filed his bank statement of accounts of his bank through P.W.2, which he had failed.

7. It is to be pointed out that the presumption stated under Sections 118 and 139 of NI Act are rebuttable in nature and the standard of proof is only preponderance of probabilities. In the instant case the accused was able to adduce evidence to show various payments made by him to the complainant. It is not the case of the complainant that the payments made to him by the accused were for a different transaction. The complainant could not state the amount to be paid by the accused

and in the circumstances the order of acquittal passed by the trial court stands confirmed.

8. In the result,

i. This Criminal Appeal is dismissed.

ii. The judgement and orders dated 17.10.2014 passed in C.C No.208 of 2013 by the Judicial Magistrate, Fast Track Court, Mayiladuthurai. is confirmed.

26.06.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1.The Judicial Magistrate, Fast Track Court, Mayiladuthurai.

2. The Section Officer, Criminal Section, High Court, Madras.

R. HEMALATHA, J.
bga

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