IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2024

CORAM:

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

Crl.A.No.503 of 2021

M.Ramani ... Appellant

Vs.

A.Solomon ... Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C, to allow this appeal to this Court against the judgment of the respondent/accused was acquittal and the said order passed in CC.No.616 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Judge, Egmore.

For Appellant : Mr.S.Natarajan
For Respondent : Mr.Sreenivasu

JUDGMENT

The appeal has been filed seeking to quash the acquittal order passed in CC.No.616 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Judge, Egmore.

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.30,00,000/- in the month of Feb 2013 for the purpose of business purpose and also to meet his family expenses. Towards the discharge of the said loan amount, it is the case of the complainant that the respondent issued two cheques bearing Nos.144055 & 144956 dated 30.06.2013 for a sum of Rs.10,00,000/- and Rs.20,00,000/- respectively. After making repeated demand, the respondent has paid a sum of Rs.60,00,000/- in cash in the year 2015 and for the remaining amount, the respondent had issued a cheque for a sum of Rs.24,00,000/- to the appellant bearing No.838555 dated 06.04.2015 for discharging the legally enforceable debt. Since the respondent did not repay the loan amount, the complainant presented the cheque before the Bank for encashment of the amount and the said cheque was returned with an endorsement "funds insufficient". Hence, the appellant gave a statutory notice to the respondent/accused seeking for repayment of the loan amount. The respondent has refused to receive the statutory notice. Since no amount was forthcoming, the appellant has filed a complaint before the learned Metropolitan Magistrate under Section 138 of NI Act which was taken on file in CC.No.616 of 2016.

3. In order to prove the case, before the trial Court, the appellant has examined one witness viz., PW1 and marked 10 documents viz., Ex.P1 to P10.

On the side of the respondent, the respondent himself examined as witness and two documents were marked.

4. After ful-fledged trial, the learned Judge rejected the case of the complainant by the impugned judgment. Aggrieved by the dismissal of his case, the complainant has preferred an appeal against the judgment of the learned trial judge.

5. Learned counsel appearing for the appellant submitted that the mother of the appellant after pledging her jewels and her family members jewels, given a sum of Rs.30/- lakhs to the respondent. For discharging legally enforceable debt, the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. It is the further submission of the learned counsel that the court below had clearly held that the cheque, which was alleged to have been given to the appellant by the respondent has not been established by the respondent and had clearly held that it had not been misused by the appellant and that being the case, a duty is cast on the respondent to rebut the

presumption u/s 139 of the Act and failure by the respondents would clearly lead to the presumption that the cheque was issued for discharging the legally enforceable debt.

6. It is the further submission of the learned counsel that it is incumbent on the part of the respondent to show how the cheque fell into the hands of the appellant and there being no claim that the cheque was lost as no police complaint was given, the only presumption that could be drawn is that the cheque was given by the respondents to the appellant and, therefore, the dishonour would entail action u/s 138 of the Act.

7. It is the further submission of the learned counsel for the appellant submitted that the respondent has not taken any defence before the trial Court. Before the trial Court, he has marked two witnesses viz., reply sent by the respondent prior to the 138 complaint, in which, the respondent has stated that the appellant as well as the respondent have made an investment in the real estate business for a sum of Rs.20,00,000/- and Rs.10,00,000/- respectively along with one Vellaikumar and Karthik suresh. However, the above said two persons have not examined before the trial Court as witnesses. In the absence of

the witnesses, the story cooked up by the respondent is not believable one. Such defence is not sufficient to hold that there is a legally enforceable debt.

8. Per contra, the learned counsel for the respondent appeared through video conferencing and submitted that admittedly, the mother of the appellant filed a complaint stating that the respondent borrowed a sum of Rs.30/- lakhs in the year 2013. In her complaint, she made it clear that her son and the respondent are close friends and they have employed as Junior Engineers in the Metropolitan Transport Corporation. In view of the said relationship, the respondent borrowed a sum of Rs.30/- lakhs from the appellant. Further, in her complaint, she stated that she pledged her jewels and her family members jewels. The proper receipt of the pledging of the jewels have not produced before the trial Court and the appellant has not established his capacity to lend such amount to the respondent. 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.

9. Heard the learned counsel for the appellant as well as the

respondent and perused the materials available on record.

10. 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: -*
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> *"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]*
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> *"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. "

11. 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.

12. The appellant is a power of attorney of his mother. The transaction has made only between the respondent and the appellants mother, who is aged about 80 years and therefore, she gave a power to his son to prosecute a case under section 138 of NI Act. According to the petitioner, his mother pledged her jewels and his family members jewels and lend a sum of Rs.30,00,000/- to the respondent. However, the appellant has marked a

receipt/Ex.P9 issued by the Chennai Corporation Central Cooperative Bank to the appellant for repayment of the loan which was obtained for mortgaging jewels. The total amount mentioned in the notice is Rs.7,60,000/- However, the appellant has not established the capacity of remaining amount for a sum of Rs.23,00,000/-.

13. Further, the complaint dated 19.01.2015 and 19.01.2014 lodged by the respondent same was marked as DW1 and DW2 whereas the complaint was registered by the respondent as against PW1, Karthik and Vellaikumar before the Otteri Police station. Prior to that the very same complainant made a complaint against the respondent for non payment of the amount on 15.12.2014. However, the same was not mentioned in the 138 complaint, which shows that the appellant has not approached the trial Court with clean hands and conveniently the same has not marked before the trial Court.

14. 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."

15. 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.

16. 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.

17. In this backdrop, it is the duty of the appellant to establish that the cheque was issued for discharging legally enforceable debt. 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 of P.W.1 has not established the capacity of the amount. Though a finding has been rendered by the court below that the appellant has not established that the cheque was issued for legally enforceable debt and hence, the complaint was dismissed.

18. 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.

19. 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.

20. 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.

21. 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 CC.No.616 of 2016 dated 10.12.2020 and there is no compelled circumstances to interfere with the judgment.

M.DHANDAPANI.J,

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22. Accordingly, this Criminal Appeal is dismissed.

11.07.2024

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Index:Yes/No
Speaking/Non speaking order
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To
The Metropolitan Magistrate, Fast Track Court-I, Judge, Egmore.

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