



Crl.A.No.77 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM

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

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P.Velusamy

... Appellant

Vs.

A.Balachandar

... Respondent

Prayer : Criminal Appeal filed under Section 378 of Criminal Procedure Code 1973 against the judgement and orders dated 10.07.2012 passed in C.C.No.532/2009 by the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

Challenging the order of acquittal dated 10.07.2012 passed in C.C.No.532/2009 by the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai, the present appeal is filed by the appellant /



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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 respondent / accused borrowed a sum of Rs.4,30,000/- in November 2007 from the complainant and in order to liquidate the said liability, the accused issued a cheque bearing number 417254 dated 30.07.2008 (Ex.P1) for a sum of Rs.4,30,000/- drawn on Indian Overseas Bank, West Mambalam Branch, Chennai, in favour of the complainant.

3.2. When the complainant presented the cheque for collection through his bankers, viz., Indian Bank, MMDA Nagar Branch, Chennai, the same was returned for the reason “Funds Insufficient”, as is seen from the cheque Return Memo dated 01.08.2008 (Ex.P3).



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3.3. Thereafter, the complainant issued a statutory notice dated 25.08.2008 (Ex.P4) to the accused calling upon him to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

3.4. Though the accused received the statutory notice on 27.08.2008, as is evidenced by the postal acknowledgement card (Ex.P5), he did not come forward to make good the payment. He did not also send any reply to the statutory notice.

3.5. Therefore, the complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai, under Section 200 Cr.P.C. against the respondent / accused for the offence punishable under Section 138 of Negotiable Instruments Act (in short N.I. Act) in C.C.No.532/2009.

3.6. The learned Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.



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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. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P5.

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. However, he did not adduce any oral / documentary evidence on his side.

3.10. The learned trial court judge after analysing the oral and documentary evidence on record acquitted the accused under Section 255(1) Cr.P.C. for the offence punishable under Section 138 of N.I. Act vide her judgment and orders dated 10.07.2012.

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



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4. In the instant case, the accused had not denied his signature on the cheque (Ex.P1). It is needless to say that once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved. The trial court judge after analysing the evidence of P.W.1, had come to a conclusion that the accused had rebutted the presumption.

5. P.W.1 had contradicted himself with regard to the payment of interest by the accused. It is settled law that the standard of proof for rebutting the presumption is that of preponderance of probabilities and the accused is not expected to produce direct evidence to discharge his burden. When P.W.1 is not clear as to what is the amount to be paid by the accused the order of acquittal passed by the trial court judged is in order.

6. It is relevant to extract the observations of the trial court.



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14. On considering the evidence and materials before court, this court is able to see that, his evidence is that he advanced Rs.4,30,000/- to the accused in November 2007. In his cross examination he specifically states that the accused was introduced to him by one of his friend and that he do not remember his name and also do not remember for how many year he knew him. But at the same time he clearly says that he know the accused for the past eight years. He admits that he did not received any pro-note from the accused for the said loan. It is pertinent to note that in his cross examination dated 28.6.12 he says that the accused has so far not paid any interest or principal. In his later part of cross examination when a specific question was put by the learned counsel for the defence as to how he gave to the accused in 2008 while the accused did not pay any amount for his earlier transaction, Pwl made a changed version that before parting with loan for the second time the accused paid the interest and hence he gave loan for the second time. He also confirms that he had made an earlier version in his cross examination that the accused did not pay any amount. The contradictory version made by Pwl in his cross examination creates a doubt as to whether Pwl had really advanced any sum to the accused and whether the accused is liable for the same.



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15. As stated earlier the accused need not enter into the box for disproving his case. The court not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. Something which is probable has to be brought on record for getting the burden of proof shifted to complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. The accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. In the present case from the contradictory version made by Pw1 with regard to the payment of interest by the accused, this court is able to see that the accused has brought in probable defence so as to shift the burden to the complainant. This reverse burden shifted on the complainant was not proved beyond all reasonable doubt. Thus though the cheque is admittedly issued by the accused, the requirement of the provisions of



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Sec 138(b) NI Act as raised by the defence has not been fulfilled by the complainant. So much so the complainant has not also proved his case beyond all reasonable doubt after the accused has brought in a probable defence. Therefore this court has to give the benefit of doubt to the accused and hence the accused would be entitled to be acquitted.”

7. In the circumstances, I do not see any reason to interfere with the findings recorded by the trial court and the order of acquittal passed by the trial court judge is hereby confirmed.

8. In the result,

- i. This Criminal Appeal is dismissed.
- ii. The judgement dated 10.07.2012 passed in C.C.No.532/2009 by the Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai, is confirmed.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

- 1.The Metropolitan Magistrate, Fast Track Court -II, Egmore, Chennai.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



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R. HEMALATHA, J.

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