IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM :

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

Crl.A.Nos.414 & 415 of 2024

A.Maheswaran ... Appellant in both Appeals

Vs.

1.M.Annamalai ... Respondent in Crl.A.No.414 of 2024

2.A.Senthilvelan ... Respondent in Crl.A.No.415 of 2024

Prayer in Crl.A.No.414 of 2024 : Criminal Appeal filed u/s.378 of the Code of Criminal Procedure, seeking to set aside the order of acquittal dated 19.01.2024 made S.T.C.No.194 of 2022 on the file of the Judicial Magistrate, Fast Track Court - 2, Erode by allowing this Criminal Appeal.

Prayer in Crl.A.No.415 of 2024 : Criminal Appeal filed u/s.378 of the Code of Criminal Procedure, seeking to set aside the order of acquittal dated 19.01.2024 made S.T.C.No.193 of 2022 on the file of the Judicial Magistrate, Fast Track Court - 2, Erode by allowing this Criminal Appeal.

For Appellant (in both Appeals) : Mr.M.Guruprasad

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COMMON JUDGEMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said orders, passed in S.T.C. Nos.194 and 193 of 2022 on the file of the Judicial Magistrate, Fast Track Court – 2, Erode, dated 19.01.2024, in and by which the respondents herein were acquitted in the case u/s 138 of the Negotiable Instruments Act (for short 'the Act'), has filed the present appeals.

2. Since no adverse order has been passed against the respondents, notice to the respondents is dispensed with.

3. The respondent in Crl.A.No.414 of 2024 and the respondent in Crl.A.No.415 of 2024 are father and son. For brevity, the appellant in both the appeals are hereinafter referred to as 'appellant' and respective respondent in both the appeals are hereinafter referred to as 'respondents'.

4. It is the case of the appellant that the appellant and respondents are known to each other. On 01.08.2021, the respondens have borrowed a sum of Rs.1,25,000/- and Rs.1,00,000/- respectively from the appellant, for which they have executed respective promissory notes. Thereafter, on 01.11.2021, the respondents have taken back the promissory notes and in order to discharge the

above stated loan amount, they have issued cheque bearing No.000001 dated 01.11.2021 drawn on HDFC Bank, Sangagiri Branch to the tune of Rs.1,25,000/- and Cheque No.735873 dated 01.11.2021 drawn on Indian Bank, Eraiyur Branch, Tiruvannamalai District to the tune of Rs.1,00,000/- respectively. As per the instructions of the respondents, the appellant presented the said cheques for collection on 03.11.2021 through State Bank of India, Erode Branch. However, the said cheques were returned dishonoured with an endorsement "account closed " and "insufficient funds" on 04.11.2021.

5. Thereafter, the appellant sent legal notices to the respondents on 16.11.2021, intimating the dishonour of cheque and calling upon them to repay the aforesaid dues under the said cheques. Inspite the service of notice on 18.11.2021, the respondent in Crl.A.No.415 of 2024 has not come forward to repay the said amount but sent reply notice on 22.11.2021 making false allegations against the appellant, however, the respondent in Crl.A.No.414 of 2024 has not come forward to repay the said amount nor send any reply to the legal notice. Therefore, complaints were filed by the appellant as against the respondents for an offence u/s 138 of the Act before the trial court in S.T.C.Nos.194 and 193 of 2022.

6. 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 respondents and upon appearance, were provided with copy of the complaints and the respondents pleaded not guilty.

7. In S.T.C.No.194 of 2022, on the side of the appellant, the appellant examined himself as P.W.2 and marked Exs.P-1 to P-4. On the side of the respondent, D.W.1 was examined and Ex.D-1 was marked. In S.T.C.No.193 of 2022, on the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-5. On the side of the respondent, D.W.s 1 and 2 were examined and Ex.D-1 was marked. The trial court, appreciating the materials available on record, held that the appellant has not established that there was a legally enforceable debt for which the cheques were issued, which was dishonoured and also failed to prove that the cheques were issued by the respondents for discharging a legally enforceable debt and, accordingly, acquitted the respondents, aggrieved by which the present appeals have been filed.

8. Learned counsel appearing for the appellant submitted that the cheques were issued by the respondents, which stood dishonoured and the

respondents have not disputed their signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondents. 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 respective D.W.1 has not been established by the respondents and had clearly held that it had not been misused by the appellant and that being the case, a duty is cast on the respondents to rebut the presumption u/s 139 of the Act and failure by the respondents would clearly lead to the presumption that the cheques were issued for discharging the legally enforceable debt.

9. It is the further submission of the learned counsel that the appellant collected all the documents including ATM card of the respondents and on the 10th day of every month, he has taken a sum of Rs.10,000/- from the year 2019 onwards till 2021 and thereafter, money was not taken by the appellant. Thereafter, he presented the cheques, which is not imaginary and the respondents have failed to rebut the presumption. However, on erroneous consideration, the trial court dismissed the complaints, which is wholly unsustainable and without properly appreciating the evidence of the appellant, the trial court drawn interference as against the appellant based on the

evidence of respondents, which is also wholly unsustainable. Therefore, interference is warranted with the findings recorded by the court below.

10. Heard the learned counsel appearing for the appellant and in view of the fact that the appeals are against the acquittal of the respondents and there is double presumption with regard to the innocence of the accused/respondents, this Court, on the basis of materials available on record, is inclined to proceed further to analyse the evidence.

11. 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 [Chandrappav. 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 anorder of acquittal emerge:*

(1) An appellate court has full power to review, reappreciate and reconsider the evidenceupon 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 ownconclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficientgrounds", "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. 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.

13. 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.

14. The respective Ex.P-1 are the cheques, which are alleged to have been issued by the respondents towards the discharge of the liability to the

appellant. However, it is the case of the respondents that the cheque, in blank, was given to the appellant by respective D.W.1 for security purpose and it has been misused by the appellant.

15. 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/respondents with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondents, 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 unpaideither 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 anoffence 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 thedrawer 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 thecheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

16. 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 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.

17. In this regard, a careful perusal of the order passed by the court below reveals that the appellant was running a provisional store in Surampatti Village, Erode. It is alleged that the respondents have borrowed a total sum of Rs.2,25,000/- from the appellant, for which, they have issued cheques and

when the cheques were presented for collection, the same was returned, thereby the appellant filed complaints. It is seen from the records that the appellant knows the father for past three years and the appellant, in his chief examination had deposed that the father was a retired military personnel and he was employed in an ATM centre as a security in Erode town, however, the appellant failed to recollect in which ATM centre, the father was employed as security. It is the case of the appellant that he has no acquaintance with the son. Further, there is no material to show the place where the amount was given and there is also no material to show the manner in which the amount was advanced. In fact, there is no material to show the financial capacity of the appellant. In the absence of any material to prove that the amounts were advanced, which was not repaid, the cheques were given by the respondents, the case of the appellant cannot be sustained. When the appellant is not able to establish that there exists a legally enforceable debt towards the discharge of which the cheques were issued, the case of the appellant that the dishonour of the cheques would entail an action u/s 138 of the NI Act is wholly unsustainable.

18. Further, it is seen that though the appellant had claimed that he had advance the loan amount to the respondents on the same day, however, the

father claims that he borrowed a sum of Rs.50,000/- in the year 2019, for which, he handed over ATM Card and unfilled cheques signed by the respondents for security purpose. Subsequently, from 28.08.2019 to 31.07.2021, the appellant has taken a total sum of Rs.2,44,700/- by taking a sum of Rs.10,000/- every month by using the ATM card and in order to prove the same, the respondents have filed bank statements before the trial court as Ex.D.1. However, in order to disprove the said fact, the appellant has not produced any effective evidence before the trial court. Therefore, the trial court has arrived at a conclusion that there is no legally enforceable debt.

19. 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.

20. However, it is to be pointed out that the dishonour of cheque would attract the provisions of Section 138 of the Act only when it has been issued for the purpose of discharging a legally enforceable debt.

21. When the appellant has not established that there exists a legally

enforceable debt, which has to be paid by the respondents 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 respondents that the cheques, which were given for the security purpose has been misused cannot be brushed aside.

22. 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.

23. For the reasons aforesaid, the impugned orders passed by the court below does not deserve any interference and the same stands affirmed. Accordingly, the Criminal Appeals are dismissed and the orders passed in S.T.C. Nos.194 and 193 of 2022 on the file of the Judicial Magistrate, Fast Track Court – 2, Erode, dated 19.01.2024 are confirmed.

08.04.2024

Index : Yes / No

Speaking order / Non-speaking order
NCC : Yes / No
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To

The Judicial Metropolitan Magistrate, Fast Track Court – 2, Erode.

M.DHANDAPANI, J.

sp

Crl.A.Nos.414 & 415 of 2024

08.04.2024