



Crl.A.No.530 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

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

Crl.A.No.530 of 2012

N.G.Palanisamy

... Appellant

Vs.

Ram Murugesan

... Respondent

Prayer : Criminal Appeal filed under Section 378 (4) Criminal Procedure Code 1973, to set aside the judgement and orders dated 30.05.2012 passed in C.C.No.367/2011 by the learned Judicial Magistrate No.I, Coimbatore.

For Appellant : Mr.P.M.Duraisamy
For Respondent : Ms.N.Krishnapriya
for Mr.R.T.Dooraiswamy

JUDGMENT

Challenging the order of acquittal dated 30.05.2012 passed in C.C.No.367/2011 by the learned Judicial Magistrate No.I, Coimbatore, the present appeal is filed by the appellant / 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.9,00,000/- from the complainant on 23.04.2008 and issued a cheque bearing number 756148 dated 30.06.2008 (Ex.P1) for a sum of Rs.9,00,000/- drawn on ICICI Bank, Trichy Road Branch, Coimbatore, in favour of the complainant.

3.2. When the complainant presented the cheque for collection through his bankers, viz., ICICI Bank, Trichy Road Branch, Coimbatore, the same was returned for the reason “Insufficient Funds”, as is seen from the cheque Return Memo dated 14.07.2008 (Ex.P2).

3.3. Thereafter, the complainant issued a statutory notice dated 23.07.2008 (Ex.P3) to the accused calling upon him to pay the amount due under the cheque within fifteen days from the date of receipt of the notice.



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3.4. The accused though received the statutory notice on 04.08.2008, as is evidenced by the postal acknowledgement card (Ex.P4), did not come forward to make good the payment. He did not also send any reply notice.

3.5. Therefore, the complainant filed a private complaint before the Judicial Magistrate No.I, Coimbatore, under Section 200 Cr.P.C. against the respondent / accused for an offence punishable under Section 138 of the Negotiable Instruments Act (in short N.I. Act) in C.C.No.367/2011.

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.P4.



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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 two other witnesses and marked Ex.R1 to Ex.R15.

3.10. The learned trial court judge after analysing the oral and documentary evidence on record found the accused not guilty of the offence under Section 138 of N.I. Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment and orders dated 30.05.2012.

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

4. Heard Mr.P.M.Duraisamy, learned counsel for the appellant and Ms.N.Krishnapriya, learned counsel for the respondent.

5. Mr.P.M.Duraisamy, learned counsel for the appellant would contend that the accused had not denied his signature on the cheque (Ex.P1) and therefore initial presumption under Sections 118 and 139 of Negotiable Instruments Act is in favour of the complainant. According to

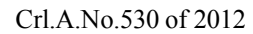


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him, the accused had not rebutted the presumption by adducing acceptable evidence and the trial court without considering these aspects had acquitted the accused. He therefore, prayed for setting aside the order of acquittal passed by the trial court judge.

6. Per contra, Ms.N.Krishnapriya, learned counsel for the respondent contended that there is no necessity for the accused to borrow a sum of Rs.9,00,000/- from the complainant and the order of acquittal passed by the trial court judge is perfectly in order and does not warrant any interference by this Court. She therefore, prayed for dismissal of the appeal.

7. At the outset, it may be observed that the accused had not denied his signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act unless the contrary is proved.



8.1. Tmt.Gnana Sagunthala (R.W.2) is the wife of the accused and her evidence was that the complainant who used to visit her office assist her while doing bank transactions and had misused one of the cheques signed by her.

8.2. When it is specifically alleged on the side of the accused



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that the cheque (Ex.P1) was taken away from the office of the accused, it is not known as to why, no police complaint was given by the accused in this regard. No notice was issued to the complainant to return the cheque till date, for the reasons best known to the accused.

9. As already observed, no reply notice was sent by the accused to the complainant though he received the statutory notice (Ex.P3). A petition was filed by the respondent to compare the signature on the cheque (Ex.P1). Since the respondent / accused had not denied his signature on the cheque (Ex.P1), the said petition was dismissed by the trial court judge. When the accused had not denied his signature on the cheque (Ex.P1) the burden of proof lies on him. The evidence of R.W.1 to R.W.3 and Ex.R1 to Ex.R15 are least helpful to the case of the accused. As already observed, the trial court judge based on the evidence of R.W.1 to R.W.3 had concluded that there was no reason for the accused to borrow a sum of Rs.9,00,000/- from the complainant in the year 2008 and that the complainant had not proved that there was a legally enforceable debt on the date of presentation of the complaint. The observations made by the trial court judge are totally perverse and



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therefore, the same has to be set aside.

10. In the result,

- i. The Criminal Appeal is allowed.
- ii. The accused is found guilty of the offence under Section 138 of N.I. Act and is sentenced to undergo Simple Imprisonment for one year and to pay a fine of Rs.9,00,000/- towards compensation to the complainant, in default, to undergo Simple Imprisonment for a period of three months.
- iii. The accused shall surrender before the learned Judicial Magistrate No.I, Coimbatore, within 15 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 the presence of the accused for serving the period of sentence.

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Index : yes/no
Speaking /Non speaking Order
mtl



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To

- 1.The Judicial Magistrate No.I, Coimbatore.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.



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