



CrI.A.No.728 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2024

Pronounced on : 19.10.2024

CORAM : JUSTICE N.SESHASAYEE

CrI.A.No.728 of 2016

R.Tamilselvan

.... Appellant / Complainant

Vs

E.Thanigachalam

.... Respondent / Accused

Prayer : Criminal Appeal filed under Section 378 Cr.P.C., praying to allow the appeal by setting aside the acquittal against the respondent, passed in STC.No.1330 of 2014 dated 12.05.2016 by the learned Judicial Magistrate No.1, Panruti and convict the respondent with a direction to pay compensation equivalent to the cheque amount.

For Appellant : Mr.K.Sasindran
For Respondent : No appearance

[Notice served]



Crl.A.No.728 of 2016

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JUDGMENT

This appeal is directed against the judgement in STC.No.1330 of 2014 dated 12.05.2016 on the file of Judicial Magistrate No.1, Panruti, acquitting the respondent herein for an alleged offence under Sec.138 of the N.I.Act.

2. The case of the appellant/complainant is as below:

- a) The complainant, one R. Tamilselvan (**P.W.1**), is a field officer in Anna Sugar Mills. The accused is a coolie who works in various sugar factories in Tamil Nadu. The complainant and the respondent/accused shared acquaintance for about three years at the time when the complaint was preferred.
- b) On 20.09.2013, the respondent borrowed Rs. 3,00,000/- from the complainant at his house for personal and family expenses. The loan was not backed by any security or documents since the complainant and the accused were acquaintances.
- c) The accused promised to repay the loan within three months, i.e., on or before 20.12.2013, along with interest. The respondent, however,



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Crl.A.No.728 of 2016

failed to repay the loan. Therefore, the complainant confronted the accused about the repayment of the loan at his house, only to be met with evasive replies. It is in these circumstances, on 25.12.2013, the respondent went to the complainant's office and issued Ext.P1 cheque bearing number 10020131, dated 24.01.2014 drawn on his banker M/s Federal Bank, in favour of the complainant.

- d) On 24.01.2014, the complainant presented the cheque for encashment with his bank, M/s Indian Overseas Bank, Kurungulam branch. However, the cheque was dishonoured on the same day due to insufficiency of funds and it was returned along with Ext.P2 the Cheque dishonour memo. The complainant received it on 29.01.2014 from his bank.
- e) On 08.02.2014, the complainant sent a statutory notice (**Ex. P3**) to the accused through his advocate. It was received by the accused on 25.02.2014. On 01.03.2014, the accused issued his Ext.P4 reply notice.

As the respondent did not come forward to discharge the outstanding liability for which he issued Ext.P1 cheque, the complaint was laid.



Crl.A.No.728 of 2016

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3. During trial, the complainant examined himself as P.W.1 and the respondent examined himself as D.W.1. While the complainant produced Exts. P1 to P4, the respondent chose not to produce any documentary evidence.

4. The line of defence as disclosed right from Ext.P4 reply notice and through the trial is: The respondent had never borrowed any amount from the appellant. Some six months prior to Ext.P3 notice, the appellant as field officer of a sugar factory, had approached the respondent for cutting cane and had advanced Rs.1.0 lakh and secured the same by obtaining the RC book of respondent's tractor, and a blank cheque. One Gurunathan and another Aruljothi were witnesses to this transaction. However, when the respondent required the appellant to return the security after the former did his contracted job, the latter had informed him that he had misplaced it. And, neither the RC book nor the cheque were returned. This cheque has been misused by him. Indeed, the respondent only knew to sign, but he is otherwise illiterate.

5. The trial court found the case of the appellant/complainant unbelievable and



Crl.A.No.728 of 2016

its reasoning is:

- a) In his complaint, Ext.P3 notice, and proof affidavit, the complainant has stated that the cheque was issued by the accused at the office of the complainant. However, in the cross-examination, the complainant has stated that the cheque was issued at his house. The place of issuance of the cheque is unclear.
- b) The complainant concedes that as a field officer in sugarcane mills, his monthly earning was around Rs.12,000/- per month. He did not show that he actually possessed Rs. 3,00,000/- in cash for him to lend to the respondent. The appellant, during cross-examination tried to explain the same, when he deposed that he had obtained the said money from an unnamed friend of his. This friend however, was not examined.
- c) Extending a loan without obtaining necessary documents from the accused as security is unnatural.
- d) P.W.1 himself has admitted that the accused does not know how to read and write. Therefore, the filling of a cheque in the English language by the accused seems highly improbable.



Crl.A.No.728 of 2016

- e) P.W.1 himself admits that he is a government servant and he did not obtain the permission of his superior to lend money to the accused.
- f) Mere production of a cheque from the complainant's possession is not sufficient to prove that the disputed cheque was issued in connection to a legally enforceable debt. Therefore, the presumption in favour of the complainant under Section 139 stands rebutted.

Accordingly, it dismissed the complaint. Hence this appeal.

6. While notice was served on the respondent, he chose not to enter appearance.

Heard the learned counsel for the appellant:

- a) When once a cheque is issued, it is first backed by a presumption under Sec.118 of the the NI Act, and when it is dishonoured then it will invite the application of Sec.139.
- b) According to the respondent, when he tendered the cheque to the appellant as the field officer of Anna Sugar factory, there were two witnesses, and he did not examine any of them. After all when the burden is on him to rebut the presumption under Sec.139 of the NI Act, he should have examined those two witnesses. His non-



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Crl.A.No.728 of 2016

examination of those two witnesses deserves drawing of adverse inference against him.

- c) The respondent has not made any attempt to retrieve these documents, cheque, and R.C book from the appellant because the appellant does not possess any of the said documents except the cheque issued to satisfy the debt.
- d) There are contradictions in the defence version of the case as stated in Ex. P4 and cross-examination. In cross-examination, the respondent contends that he had issued the cheque as a security to secure his job in the Anna Sugar Mills . However, in Ext. P4, he has stated that he had issued the cheque as a security to back the advance money of Rs. 1,00,000/- extended by the appellant.
- e) The salary of the appellant is not a criterion to measure the lending capacity of the appellant. If the respondent desires to dispute the lending capacity of the appellant, it is for him to substantiate that the appellant did not possess the requisite lending capacity to extend Rs. 3,00,000/- at the time when the said amount was handed to the respondent.



f) The presumption under Section 139 should be rebutted by the respondent and the court cannot do the same on the basis of the lacunae found in the version of the complainant.

7. The appellant is informed that where he had preferred an appeal against the judgement of the trial court acquitting the accused person, then he ought to establish before this court that the evidence on record can only lead to one conclusion which points to the guilt of the accused person, and hence the judgement acquitting the latter is perverse. And, where two views are possible the one in favour of the accused person should be preferred.

8. There are two aspects of the appellant's submissions on the point of law with which this court concurs: (a) that a negotiable instrument is backed by consideration under Sec.118 of the NI Act, and where the negotiable instrument is a cheque and where the cheque so issued is dishonoured then Sec.139 of the NI Act creates a presumption that it was issued for discharging an outstanding liability; and (b) while both these presumptions are rebuttable, it is for the accused person to rebut it through evidence and it is not for the Court.



Crl.A.No.728 of 2016

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9. During cross examination the appellant as P.W.1, had conceded that he did not possess the money but had borrowed it from his friend, and this opens a line of defence for the respondent where he is seen attempting to establish that the appellant did not possess the money to advance it to the former. This is a permissible line of defence for rebutting the presumption under Sec.139 of the NI Act. Secondly, PW1 had deposed that the respondent had filled the cheque, whereas according to the respondent he only knew to put his signature and that he is otherwise illiterate. P.W.1 also admits that since the respondent was illiterate, he would have the accounts submitted to the sugar mills only through the former (the appellant). The cheque in question shows that the respondent had signed the cheque in Tamil typically like an illiterate who is taught only to sign, but the body of the cheque is filled up in English. Whether the respondent could have filled up the cheque? The cheque itself is scanned and pasted below:



Crl.A.No.728 of 2016

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How to believe that a man whose strokes in the signature are hardly seen as free flowing could have filled up the body of the cheque in English where the hand is seen to be free moving were written by the same person ? There is terrible mismatch and it extends to affect even the believability of appellant's case. And, P.W.1 himself lends corroboration to this conclusion since he had conceded that he would write the accounts for the respondent as the latter was illiterate.

10. The evidence on record indicate that, contrary to the perception of the appellant, the trial Court has not over enthusiastically come to the rescue of the respondent by spinning its own facts for rebutting the statutory presumption, but the appellant himself has fed the trial court with adequate facts for it to arrive at the decision that it had arrived. This court does not find that the



Crl.A.No.728 of 2016

judgement of the court below is perverse as to warrant an interference by this court.

11. To conclude, the appeal is dismissed and the judgment of the learned Judicial Magistrate No.1, Panruti, dated 12.05.2016 in STC.No.1330 of 2014 is hereby confirmed.

19.10.2024

Index : Yes / No

Neutral Citation : Yes / No
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To:

The Judicial Magistrate No.1
Panruti.



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CrI.A.No.728 of 2016

N.SESHASAYEE.J.,
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Pre-delivery Judgment in
CrI.A.No.728 of 2016

19.10.2024