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CRLA.No.490 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.08.2024

CORAM :

MR. JUSTICE N.SESHASAYEE

CrI.A.No.490 of 2013

K.Sivakumar

... Petitioner

Vs.

M.Subramaniam

... Respondent

Prayer: Criminal Appeal is filed under Section 378 Cr.P.C. against the Judgement dated 15.10.2012 made in S.T.C.No.1287 of 2010 on the file of the learned Judicial Magistrate No.II, Pollachi, acquitting the accused under Section 255(1) Cr.P.C. for the offence under Section 138 of Negotiable Instruments Act, 1881.

For Petitioner : Mr.M.N.Balakrishnan

For Respondent : Mr.S.Vignesh Kumar

JUDGMENT

This appeal is preferred by the complainant in S.T.C.No.1287 of 2010, on the file of the learned Judicial Magistrate No.II, Pollachi, challenging



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the decision of the learned Magistrate in acquitting the respondent on a complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

2.The case of the complainant is that on 22.05.2010 the respondent had borrowed a sum of Rs.70,000/- and handed over a post dated cheque drawn on Canara Bank, Zamin-Uthukuli Branch, dated 22.06.2010 for the aforesaid loan amount of Rs.70,000/-. When the cheque was presented for encashment, it was dishonoured vide Memo of dishonour dated 30.06.2010 on the ground that the account is lying dormant. Without wasting time, the appellant issued Ex.P3 statutory notice dated 06.07.2010 on the respondent, requiring the latter to pay him the sum noted in the cheque. The respondent responded to this notice with his reply dated 26.07.2010 vide Ex.P5, wherein he has pleaded that he had never borrowed any sum from the appellant. Indeed, he has even required the appellant to share a copy of the cheque in question.

3.Eventually, the appellant preferred a complaint before the learned Magistrate, which the learned Magistrate took cognizance of and



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proceeded to inquire the matter. During trial the complainant examined himself as PW1 and has marked Ex.P1 to Ex.P5, of which Ex.P1 is a cheque in question. The other material documents are Ex.P3 and P5.

4.Turning to the respondent, he examined DW1, an independent witness, through whom he marked Ex.D1. On appreciating the evidence before her, the learned Magistrate opted not to believe the version of the appellant. The line of reasoning of the learned Magistrate is that the respondent is able to create a probability with the proof of his defence that he had borrowed a sum of Rs.5,000/- as a hand loan from his colleague working in State Transport Corporation, for securing the repayment of which he had handed over a blank cheque and the said Chandrasekar had set up his brother, the complainant / appellant herein and had filed the complaint. The learned Magistrate, accordingly drew an inference that it would be improbable for the appellant to advance a loan to an utter stranger and granted benefit of doubt to the respondent and acquitted him. This judgment is now under challenge.

5.The respondent at no time denied his signature in the cheque which



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necessarily means that the presumption under Section 139 of the Negotiable Instruments Act r/w Section 118 (a) would come to the aid of the appellant and that the burden is entirely on the respondent to create the right kind of probability to improbabilise the case of the appellant. To state that merely because two persons are strangers does not ipso facto imply that there cannot be a loan transaction. The very admission of the respondent makes it clear that the appellant's brother Chandrasekar was his colleague. Therefore, to say that both the parties herein are utter strangers might not be conceivable. Therefore, the learned Magistrate was in egregious error in creating a probability in favour of the defence case where there is none.

6. There is no representation for the respondent. On a perusal of the records, this Court finds that there is a far greater clinching circumstance which will go to the aid of the respondent which the learned Magistrate has missed. During the cross examination of PW1 as to when exactly the loan was advanced, the appellant had replied that the loan was advanced at 11.30 a.m. on 22.05.2010. Now the respondent was working as a conductor in the State Transport Corporation and through DW1, the time



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keeper of the State Transport Corporation and with the aid of Ex.D1 was able to establish that at 11.30 a.m. on 22.05.2010, he was on duty. Literally the respondent had pleaded alibi and was also able to establish it. This creates a strong probability far greater than something which the learned Magistrate has weighed to create a dent in the case of the appellant. The appellant is not able to come up with any real explanation for the same.

7.This Court does not find any merit in this appeal and the same is dismissed, not on the ground on which the learned Magistrate has dismissed the complaint, but on the ground of respondent establishing the alibi to disprove the case of the complainant.

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Index : yes / no
Neutral Citation



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To

1.The Judicial Magistrate No.II
Pollachi



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N.SESHASAYEE, J.

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