IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.471 of 2017

N.Sathyanarayanan ... Appellant

vs.

C.Murugan ... Respondent

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the judgment and orders dated 24.09.2016 passed in C.A.No.222 of 2015 by the learned IV Additional District and Sessions Judge, Coimbatore, reversing the judgment and orders dated 19.09.2015 passed in S.T.C.No.42 of 2012 by the Judicial Magistrate, FTC No.2, Coimbatore.

For Appellant : Mr.M.Guruprasad

For Respondent : Ms.S.Shiva Priya
for M/s.P.Muthukumarasamy

JUDGMENT

Challenging the order of acquittal dated 24.09.2016 passed by IV Additional District and Sessions Judge, Coimbatore, in C.A.No.222 of 2015, the present criminal appeal is filed by the appellant/complainant.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present criminal appeal would also be indicated.

3. The case of the complainant in a nutshell is as follows:-

The accused borrowed a sum of Rs.5,00,000/- from the complainant on 10.08.2011 and handed over a Post Dated Cheque (Ex.P1) bearing number 188801 drawn on Indian Overseas Bank, Ramalinga Nagar Branch, Coimbatore, dated 24.09.2011, for a sum of Rs.5,00,000/- to the complainant. When the cheque was presented by the complainant for collection on 08.10.2011 through his bankers, viz., ICICI Bank Ltd., Coimbatore, it was returned for the reason "Payment stopped by drawer", as is seen from the cheque return memo and Debit Advice (Ex.P2 and Ex.P3) dated 10.10.2011. Thereafter, the complainant issued a statutory notice dated 14.10.2011 (Ex.P4) to the accused calling upon him to pay the amount due under the Cheque (Ex.P1) within a period of fifteen days from the date of receipt of the notice. According to the complainant, though the accused received the said notice, as is evidenced by the postal acknowledgment card dated 17.10.2011 (Ex.P5), he did not come forward to make good the payment and did not also send any reply notice.

4. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., before the Judicial Magistrate, Fast Tract Court at Magisterial Level-II, Coimbatore in S.T.C.No.42 of 2012 against the accused for an offence punishable under Section 138 of Negotiable Instruments Act, 1881. Subsequent to the filing of the private complaint, the accused issued a reply notice dated 21.11.2011 (Ex.P6), which according to the complainant contained false allegations.

5. The learned Judicial Magistrate took cognizance of the offence and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the Judicial Magistrate furnished him copies of records under Section 207 Cr.P.C. When the accused was questioned with regard to the substance of accusation made in the complaint, he pleaded not guilty. Therefore, the case was posted for trial.

6. The complainant examined himself as P.W.1 and one another witness as P.W.2 and marked Ex.P1 to Ex.P8.

7. The accused, when questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He examined four witnesses on his side as D.W.1 to D.W.4 and marked Ex.D1 to Ex.D14.

8. The learned Judicial Magistrate, after analysing the oral and documentary evidence on record, found the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a further period of two months, vide his judgment and orders dated 19.09.2015. Aggrieved over the same, the accused filed an appeal in C.A.No.222 of 2015 before the IV Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge, after analysing the oral and documentary evidence on record, vide her judgment dated 24.09.2016 acquitted the accused on the following grounds:-

(i) The complainant has not proved his financial capacity to lend a huge sum of Rs.5,00,000/- to the accused.

(ii) Kavitha (D.W.2), the wife of the accused had lodged a police complaint on 27.09.2011 against Yasodha, Vijayalakshmi and others stating that several cheques including Ex.P1 were obtained by them under threat and coercion and that the police also after completing investigation laid a final report in C.C.No.431 of 2011 against Yasodha, Vijayalakshmi, Venkatraman, Senthilkumar.

9. Aggrieved over the judgment passed by the Lower Appellate Court, the present criminal appeal is filed by the appellant/complainant.

10. Heard Mr.M.Guruprasad, learned counsel appearing for the appellant/complainant and Ms.S.Shiva Priya, learned counsel appearing for the respondent/accused.

11. 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, 1881, unless the contrary is proved.

12. In the instant case, the accused in his reply notice dated 21.11.2011 had taken a specific stand that his wife-Kavitha had handed over his signed cheques bearing Nos.188801 to 188803 drawn on Indian Overseas Bank, Ramalinga Nagar Branch to Yasodha, Vijayalakshmi, Venkatraman and Senthilkumar for the purpose of starting a business. It is also stated by him that the said persons had also collected lakhs of rupees towards 'Kanthu Vatti' from his wife and others for which a police complaint was lodged with the B11, Saibaba Colony Police Station, Coimbatore District, by one Sasikala which came to be registered as FIR (Ex.D6) in Crime No.1064/2011.

13. The wife of the accused in her police complaint (Ex.D8) dated 27.09.2011 had stated that Vijayalakshmi and Yasodha and others obtained the cheques on 24.09.2011 under threat and coercion. Since the police did not take any action, the wife of the accused filed Crl.O.P.Nos.26759 and 26762 of 2013 before this Court and the police as per the orders of this Court (Ex.D9), registered FIR (Ex.D12) in Crime No.472 of 2014 and subsequently, filed a final report in C.C.No.817 of 2017 before the Judicial Magistrate No.VII, Coimbatore for the offences

punishable under Sections 147, 342 and 506 (ii) IPC and Section 4 of Tamil Nadu Prohibition of charging Exorbitant Interest Act. The learned Judicial Magistrate after full fledged trial acquitted Vijayalakshmi, Venkatraman, Yasodha, Senthilkumar and Sureshkumar from the aforesaid offences, vide his judgment and orders dated 30.01.2020. The learned Judicial Magistrate No.VII, Coimbatore, in his judgment had categorically held that the prosecution has not proved that the accused came down to the house of Kavitha on 26.01.2011 and obtained the cheques from her under threat and coercion. Therefore, it is clear that the police complaint is only an after thought and in any event, the accused and his wife were not able to establish their case. This judgment is subsequent to the judgment of the Lower Appellate Court in C.A.No.222 of 2015.

14. In the present case, the accused had not adduced any evidence to rebut the presumption under Section 139 of the Negotiable Instruments Act and this aspect was gone in *extenso* by the learned Trial Court Judge. On the contrary, the Lower Appellate Court Judge had held that the complainant had not proved his means to lend a huge sum of Rs.5,00,000/- to the accused, as he had not filed his Income Tax Returns.

The complainant in his evidence had clearly stated that he owns 2.5 acres of land in Narasipuram Village, Coimbatore District and that he is also running a Travel Agency. He admitted that he is an Income Tax Assessee and he also produced his PAN Card before the Trial Court. In the circumstances, it cannot be contended that the complainant had not proved his financial capacity to lend a sum of Rs.5,00,000/- to the accused. Moreover, this plea was not taken even by the accused.

15. He has not also explained how the cheques issued in favour of Yasodha and Vijayalakshmi went into the hands of the complainant and all the answers of the accused to the questioning under Section 313 Cr.P.C., were of simple denial. Therefore, the Lower Appellate Court had committed a gross error by acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and on the other hand, the Trial Court by a well reasoned order had convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, the present revision is liable to be allowed. However the sentence is modified as under :

"The accused is sentenced to undergo simple imprisonment for a period of six months and to pay compensation of

Rs.5,00,000/- to the complainant in default, to undergo simple imprisonment for a period of four weeks."

15. In the result,

(i) the Criminal Appeal is allowed and the judgment and orders dated 24.09.2016 passed by the IV Additional District and Sessions Judge, Coimbatore, in C.A.No.222 of 2015, is set aside.

(ii) While the conviction passed by the trial court is confirmed, the sentence is modified as under :

"The accused is sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.5,00,000/- to the complainant in default, to undergo simple imprisonment for a period of four weeks."

(iii) The respondent/accused shall surrender before the Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, within 15 days from the date of receipt of a copy of the order/uploading of the order, failing which, the Trial Court shall take appropriate steps to secure his presence for undergoing the sentence.

23.07.2024 Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm

To

1.The IV Additional District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate, FTC No.2, Coimbatore.

3.The Section Officer, Criminal Section,
High Court, Madras.

R.HEMALATHA, J.

dm

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