



Crl.A.No.583 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

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

Crl.A.No.583 of 2017

R.Saravanakumar

... Appellant

Vs.

E.Muthulakshmi

... Respondent

Prayer : Criminal Appeal filed under Section 378 of Criminal Procedure Code 1973 against the judgement and orders dated 27.03.2017 passed in Crl.A.No.194/2016 by the II Additional District Judge, Erode, reversing the judgement and orders dated 04.11.2016 passed in S.T.C. No.231/2015 by the Judicial Magistrate, Fast Track Court – I, Erode.

For Appellant : Mr.S.Kamadevan

For Respondent : Mr.M.Guruprasad

JUDGEMENT

Challenging the order of acquittal passed by the II Additional District Judge, Erode on 27.03.2017 in Crl.A.No.194/2016, the present



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appeal is filed by the appellant / complainant.

2. The appellant is the complainant in S.T.C. No.231/2015 on the file of the Judicial Magistrate, Fast Track Court – I, Erode.

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

- i. The respondent / accused borrowed a sum of Rs.4,00,000/- from the complainant on 06.01.2014 for her business purpose and issued a cheque bearing number 738824 (Ex.P1) drawn on IDBI Bank, Sathy Road, Erode Branch.
- ii. According to the complainant, the accused promised to repay the principal amount of Rs.4,00,000/- along with interest at the rate of 12% per annum.
- iii. When the cheque was presented by the complainant for collection on 19.02.2014 through his banker, viz., Punjab National Bank, Erode Branch, the same was returned on 20.02.2014 for the reason "Account Closed", as is seen from the cheque return memo



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- iv. Therefore, the complainant issued a statutory notice dated 27.02.2014 (Ex.P3) to the accused calling upon her to pay the amount due under the cheque within 15 days from the date of receipt of the notice.
- v. The accused received the said statutory notice on 05.03.2014, as is evidenced by the postal acknowledgement card (Ex.P4) and sent a reply notice dated 17.03.2014 (Ex.P5), which according to the complainant contained false allegations.
- vi. Therefore, the complainant filed a private complaint before the Judicial Magistrate, Fast Track Court No.I, Erode, under Section 200 Cr.P.C. against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act (N.I. Act) in S.T.C.No.231/2015.
- vii. The learned Judicial Magistrate, Fast Track Court No.I, Erode, took cognizance of the offence under Section 138 of the Negotiable Instruments Act (N.I. Act) and issued summons to the accused under Section 204 Cr.P.C.



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viii. On the appearance of the accused, the copies of the records were furnished to her under Section 207 Cr.P.C. The substance of accusation made in the complaint was put to the accused and since the accused pleaded not guilty, the case was posted for trial.

ix. On the side of the complainant, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P5.

x. When the accused was questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. She examined herself and three other witnesses and marked Ex.R1 to Ex.R14.

xi. The learned trial court judge after analysing the oral and documentary evidence on record convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of six months and to pay a compensation of Rs.4,00,000/- to the complainant under Section 357(3) Cr.P.C. in default, to undergo simple imprisonment for a



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xii. Aggrieved over which, the accused filed an appeal in Criminal Appeal No.194/2016 before the II Additional District Judge, Erode. The learned II Additional District Judge, Erode, allowed the appeal and acquitted the accused on the following grounds :

- a. The complainant had not proved his means to lend a sum of Rs.4,00,000/- to the accused.
- b. The complainant did not also file his Income Tax Returns.

xiii. Now the present appeal is filed against the order of acquittal passed by the appellate court judge.

4. Heard Mr.S.Kamadevan, learned counsel for the appellant and Mr.M.Guruprasad. learned counsel for the respondent.

5. Mr.S.Kamadevan, learned counsel appearing for the appellant would contend that the accused had not denied her signature on the cheque. Once the signature is admitted, there is a presumption under



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Sections 118 and 139 of the Negotiable Instruments Act unless the contrary is proved by the accused. In the instant case, the appellate court judge had placed the entire burden of proof on the complainant and had acquitted the accused. In this regard, he relied on the decision in “**Rajesh Jain Vs. Ajay Singh**” reported in “**2024 (1) CTC 637**”. His further contention is that when the accused himself has not questioned the financial capacity of the complainant in her reply notice (Ex.P5) the appellate court on its own rendered a finding that the complainant did not prove his financial capacity to lend a huge sum of Rs.4,00,000/-.

6. Per contra, Mr.M.Guruprasad, learned counsel for the respondent would contend that the initial burden is on the complainant to prove that he lent a sum of Rs.4,00,000/- to the accused and that he had sufficient source of income for the same. His further contention is that the husband of the accused borrowed loan from one KMK Finance Company and Thiru. Kannan, Proprietor of the said Finance Company had handed over the cheques issued by the husband of the accused to the present complainant in order to file a false case. He therefore would contend that



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when the appellate court had properly analysed the evidence on record, there is no reason for this court to interfere with the same. He therefore, prayed for dismissal of the present appeal.

7. At the outset it may be observed that the accused had not denied her signature on the cheque (Ex.P1). Once the signature is admitted there is a presumption under Section 118 and 139 of the Negotiable Instruments Act unless the contrary is proved. The trial court judge had infact analysed this aspect and had convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. It is pertinent to point out that the accused had not questioned the financial capacity of the complainant in her reply notice. It is seen from the records that the complainant examined himself as P.W.1 on 16.02.2015 and the accused cross examined P.W.1 only on 07.10.2015. In the meantime, the accused was also questioned under Section 313 Cr.P.C. Therefore, the complainant, in the absence of a specific averment in the reply notice with regard to his financial capacity cannot be expected to prove his means at the fag end of the trial.



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8. In the decision in “**Rajesh Jain vs Ajay Singh**” (cited supra)

it has been held thus :

" 34.The NI Act provides for two presumptions : Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that “unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability”. It will be seen that the “presumed fact” directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35.Section 139 of the NI Act, which takes the form of a “shall presume” clause is illustrative of a presumption of law. Because Section 139 requires that the Court “shall presume” the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase



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54. *Nothing significant has been elicited in the cross-examination of the complainant to raise any suspicion in the case set up by the complainant. Other than some minor inconsistencies, the case of the complainant has been consistent throughout as can be noticed from a perusal of the complainant, demand notice and affidavit evidence. In fact, the signature on the cheque having not been disputed, and the presumption under Sections 118 and 139 having taken effect, the complainant's case stood satisfied every ingredient necessary for sustaining a conviction under Section 138. The case of the defence was limited only to the issue as to whether the cheque had been issued in discharge of a debt/liability. The accused having miserably failed to discharge his evidential burden, that fact will have to be taken to be proved by force of the presumption, without requiring anything more from the complainant."*

9. If really the accused had handed over the cheques to her



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husband who in turn handed over the same to one Kannan of KMK Finance Company, both of them would not have kept quite. In fact neither a police complaint against the said Kannan, Proprietor of KMK Finance was preferred nor a notice was issued to Kannan requesting him to return the cheques for which the amount was already paid. In the circumstances, the order of acquittal passed by the appellate court judge is totally erroneous and therefore, the same has to be interfered by this Court.

10. In view of the above, the appeal is allowed. The judgment and orders passed by the appellate court judge is set aside and the judgment and orders passed by the trial court judge is restored. The conviction and sentence passed by the trial court judge in S.T.C.No.231/2015 against the accused is hereby confirmed.

11. In the result,



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i. This Criminal Appeal is Allowed.

ii. The judgement and orders dated 27.03.2017 in Crl.A.No.194/2016 passed by the II Additional District Judge, Erode, is set aside and the judgement and orders dated 04.11.2016 in S.T.C. No.231/2015 passed by the Judicial Magistrate, Fast Track Court – I, Erode, is confirmed.

iii. The accused shall surrender before the learned Judicial Magistrate, Fast Track Court – I, Erode 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 her presence for serving the remaining period of sentence.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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1.The II Additional District Court, Erode.

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

3.The Public Prosecutor, High Court, Madras.

4.The Section Officer, Criminal Section, Madras High Court, Chennai.

R. HEMALATHA, J.

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