IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A. No.584 of 2017

P. Kumaresan
S/o. Periyasamy ...Appellant

Vs.

E. Muthulakshmi ...Respondent

Prayer : Criminal Appeal filed under Section 378 of the Criminal Procedure Code to set aside the judgment and orders dated 27.03.2017 passed in C.A.No. 195 of 2016 by the II Additional District Judge, Erode, reversing the judgment and orders dated 04.11.2016 passed in STC No.265 of 2014 by the Judicial Magistrate, Fast Track Court I, Erode.

For Appellant : Mr.S.Kamadevan
For Respondent : Mr.M.Guruprasad

JUDGMENT

Challenging the order of acquittal passed by the learned II Additional Sessions Judge, Erode in C.A. No.195/2016, the present appeal is filed by the complainant.

2. The appellant is the complainant in STC No.265/2014 on the file of the Judicial Magistrate, Fast Track Court No.I, Erode.

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

3.1. The accused borrowed a sum of Rs.4,00,000/- from the complainant on 20.01.2014 to meet her business expenses and issued a cheque bearing number 738825 (Ex.P1) dated 18.02.2014 drawn on IDBI Bank, Sathy Road, Erode Branch for a sum of Rs.4,00,000/-. She also promised to repay the said amount together with interest at the rate of 12% per annum.

3.2. When the complainant presented the cheque for collection on 19.02.2014 through his bankers, viz.,, Punjab National Bank, Erode Branch, the same was returned on 20.02.2014 with an endorsement 'Account Closed', as is seen from the cheque return memo (Ex.P2).

3.3. Thereafter, the complainant issued a statutory notice dated 03.03.2014 (Ex.P3) to the accused calling upon the latter to pay the amount due under the cheque (Ex.P1) within a period of 15 days from the date of receipt of the notice. The accused received the statutory notice on 13.03.2014, as is evidenced by the postal acknowledgement card (Ex.P4), and sent a reply notice (Ex.P5) dated 25.03.2014, which according to the complainant, contained false allegations.

3.4. 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.265/2014.

3.5. 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.

3.6. On the appearance of the accused, the copies of 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.

3.7. On the side of the complainant, the complainant examined himself and marked Ex.P1 to Ex.P5.

3.8. When the accused was questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having committed any offence. She examined 4 witnesses and marked Ex.R1 to R26.

3.9. After analysing the evidence on record, the learned trial court judge 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 6 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 period of one month, vide his judgment and orders dated 04.11.2016.

3.10. Aggrieved over the same, the accused filed an appeal in C.A.No.195/2016 before the II Additional Sessions Judge, Erode. The learned II Additional District Judge, Erode, allowed the appeal and acquitted the accused on the following grounds :

i. The complainant had not proved his means to lend a sum of Rs.4,00,000/- to the accused.

ii. The complainant did not also file his Income Tax Returns.

3.11. Aggrieved over the order of acquittal passed by the appellate court Judge, the complainant has preferred this Criminal Appeal.

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 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 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 had 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 had

not proved 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 the 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 against the complainant. He therefore would contend that 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 Sections 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. 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.

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 "unless the contrary is proved".

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. In the instant case, the specific contention of the accused is that she lodged a complaint on 31.08.2014 against one Kannan, Proprietor of K.M.K. Finance, as he is charging exorbitant rate of interest. This complaint has not been marked by the accused. It is also her contention that based on her specific complaint to the Chief Minister's Cell, the Inspector of Police, Surampatti Police Station, registered an FIR against the said Kannan. The acknowledgement card evidencing the receipt of her complaint dated 03.11.2014 by the Chief

Minister's Cell has been marked as Ex.R6. The FIR in Crime No.527/2014 by Erode South Police Station has been marked As Ex.R7. A perusal of the FIR (Ex.R7) shows that one Kannan of K.M.K. Finance had lodged a complaint against the accused, her husband and five officials, who threatened him with dire consequences. This F.I.R. was registered on 14.11.2014 for the offences punishable under Sections 294(b), 506(ii), 447, 387 r/w511, 387 r/w 116, 506 (i) IPC r/w Section of 4 of the Information Technology Act 2000 under Section 2 of Human Rights Act. Therefore, the contention of the accused that she lodged a complaint against the said Kannan of K.M.K. Finance is totally false and infact, Kannan has lodged a complaint against the accused and her husband. In the complaint, the said Kannan had specifically averred that the he was threatened by the accused to withdraw the case filed by him against her. The accused had not established how the FIR in Crime No.527/2014 is relevant to the present case. The accused even after receipt of the statutory notice,did not issue any notice to the said Kannan for return of the cheques allegedly issued by her husband. The averments in the reply notice (Ex.P5) are totally vague and it is a simple denial of borrowal of any amount from the complainant. The accused had not explained as to how the cheques belonging to her went to the hands of the complainant.

10. Mr.M.Guruprasad, learned counsel for the respondent / accused contended that the cheques issued by the husband of the accused to K.M.K. Finance were handed over to the present complainant and one Saravanakumar for the purpose of filing two difference cases. In order to substantiate this he relied on the mobile phone call records between one Saravana Kumar and the present complainant. These call records are subsequent to the filing of the private complaint and nothing can be inferred that they were talking to each other only with regard to the case initiated by them against the accused. The trial court Judge had analysed all the documents threadbare and had come to the conclusion that the accused is guilty of the offence punishable under Section 138 of NI Act. On the other hand the appellate court judge, even without a specific plea by the accused that the complainant did not have sufficient means to lend a sum of Rs.4,00,000/- to her, had rendered a finding that the

complainant was not possessed of sufficient means. The other aspects of the case have not at all been properly analysed by the appellate court Judge and therefore the judgment and orders passed by the appellate court is liable to be set aside.

11. 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.265/2014 against the accused is hereby confirmed.

12. In the result,

i. This Criminal Appeal is Allowed.
ii. The judgement and orders dated 27.03.2017 in Crl.A.No.195/2016 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.265/2014 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.

05.06.2024

(2/2)

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

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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