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CrI.O.P.No.23238 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

CrI.O.P.No.23238 of 2023
in CrI.A.SR.No.49672 of 2023

V.Mounitharan

... Petitioner

Vs.

V.C.Sakthivel

... Respondent

Prayer: Criminal Original Petition filed under Section 378 (4) of Cr.P.C., to grant leave to the petitioner/appellant to file an appeal as against the impugned judgment of acquittal dated 24.07.2023 made in S.T.C.No.29 of 2020 on the file of Judicial Magistrate, Fast Track Court No.2, Erode.

For Petitioner : Mr.P.C.Harikumar
for
M/s.P.C.Harikumar and Associates
ORDER

This petitioner has filed this Original Petition seeking leave to file an appeal as against the impugned judgment of acquittal dated 24.07.2023 made in S.T.C.No.29 of 2020 on the file of Judicial Magistrate, Fast Track Court No.2, Erode.



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2. The facts of the case are as follows:

It is the case of the complainant that the respondent and his wife jointly borrowed a sum of Rs.5,00,000/- on 01.02.2019 to meet his family needs. Again, the respondent and his wife jointly borrowed further sum of Rs.5,00,000/- on 01.03.2019 and again on 01.04.2019, the respondent and wife borrowed a sum of Rs.4,50,000/-. Towards the discharge of the said loan amount, it is the case of the complainant that the respondent issued a cheque dated 01.07.2019 for a sum of Rs.14,50,000/-. However, the respondent and his wife have not come forward to clear the loan, the complainant presented the cheque before the Bank for encashment of the amount on 01.07.2019. However, the said cheque was returned on 02.07.2019 with an endorsement "funds insufficient". Hence, the complainant gave a statutory notice to the respondent/accused on 23.10.2019 seeking for repayment of the loan amount. The respondent has not come forward to settle the loan and not sent any reply. Since no amount was forthcoming, the petitioner has filed a complaint before the learned Judicial Magistrate under Section 138 of NI Act which was taken on file in STC. No.29 of 2020. After ful-fledged trial, the learned Judge rejected the case of the complainant made by the petitioner by way of the impugned order.



Aggrieved by the dismissal of his case, the complainant has filed the present OP seeking leave of this Court to prefer an appeal against the judgment of the learned trial judge.

3. The learned counsel appearing for the petitioner vehemently argued that the trial Judge ought not to have disbelieved the case of the complainant. The complainant has produced all materials records and his oral evidence is crystal clear as to the borrowing of the loan by the respondent and non repayment of the same. Initially, the respondent has given two promissory notes. When the respondent has given cheque to the petitioner, the petitioner has returned the promissory notes to the respondent. The respondent has given a cheque for a sum of Rs.14,50,000/- dated 01.07.2019. The respondent has agreed that he would repay the entire loan amount within a very short period. However, after giving sufficient opportunities, the respondent did not repay the amount. Therefore, the complainant made use of the cheque given by the respondent and presented the same for collection and the said cheque was dishonored. Therefore, the complainant has issued Statutory notice, even after receipt of the said notice, the respondent has failed to honour his commitment. Therefore, the complainant was forced to approach the Judicial Magistrate with



the present complaint. The learned trial Judge, without appreciating the material facts, has dismissed the case of the complainant. Hence, the learned counsel prays that special leave may be granted to the petitioner to prefer an appeal against the order of the learned trial Judge.

4. Learned counsel appearing for the complainant submitted that the cheque was issued by the respondent, which stood dishonoured and the respondent has not disputed his signature in the cheque, which clearly shows that there is a legally enforceable debt, which has not been discharged by the him. It is the further submission of the learned counsel that the court below had clearly held that the cheque, which was alleged to have been given to the complainant by the respondent has not been established by the respondent and had clearly held that it had not been misused by the complainant and that being the case, a duty is cast on the respondent to rebut the presumption u/s 139 of the Act and failure by the respondent would clearly lead to the presumption that the cheque was issued for discharging the legally enforceable debt.

5. It is the further submission of the learned counsel that the complainant has clearly established that the respondent has deliberately refused to settle the amount, which is not sustainable. However, all those facts have not



been properly considered by the court below while passing the impugned order acquitting the respondent and, therefore, interference is warranted with the findings recorded by the court below.

6. Per contra, the learned counsel for the respondent submitted that the respondent has not borrowed 14,50,000/-. Initially there was a transaction between the petitioner and the respondent, for which, the respondent has issued blank cheque to the petitioner. The said cheque was misused by the petitioner. The learned trial Judge has given cogent and convincing reasons for disbelieving the case of the complainant. The learned Judge has drawn into threadbare and has clearly brought out the falsehood of the case of the complainant. The learned trial Judge has rightly rejected the complaint on the ground that the respondent's bank account is joint account,

7. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

8. Heard the learned counsel for the complainant and the learned counsel appearing for the respondent and perused the materials available on



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9. Time and time again, the scope and power of the High Court to interfere with an order of acquittal recorded by the trial court has been highlighted by the Supreme Court and recently in Babu Sahebagoada Rudragoudar & Ors. – Vs – State of Karnataka (C.A. No.985/2010 – Date – 19.04.2024), the Supreme Court had captured the ratio succinctly, which have to be followed in an appeal against an order of acquittal and for refreshing the law, the same is quoted hereunder :-

37. This Court in the case of Rajesh Prasad v. State of Bihar and Anr. (2022 (3) SCC 471) encapsulated the legal position covering the field after considering various earlier judgments and held as below: -

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words: (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an



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order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the



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presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

38. Further, in the case of H.D. Sundara & Ors. v. State of Karnataka (2023 (9) SCC 581) this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of



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acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

(Emphasis Supplied)

12. Thus, from the aforesaid proposition of law, it is beyond a cavil of doubt that the power of this Court is not curtailed or limited, as it is within its realm to reappreciate



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the evidence available on record to render a finding.

However, in reappreciating the evidence, this Court has to see whether the view taken by the trial court could not be taken by any prudent man on appreciating the materials available before it. If the view taken by the trial court, considered overall on the materials placed, is just and reasonable that the view taken by the trial court is on proper appreciation of the materials, the High Court cannot interfere with the acquittal on the ground that another view is possible. "

10. In light of the above legal principles enunciated by the Apex Court, this Court will now proceed to analyse the evidence on record to find out whether the view arrived at by the trial court is based on the materials available on record.

11. Ex.P-1 is the cheque, which is alleged to have been issued by the respondent towards the discharge of the liability to the petitioner. However, it is the case of the respondent that the cheque, in blank, was given to the petitioner long back by the respondent for security purpose and it has been misused by him.

12. In the aforesaid factual scenario, Sections 138 and 139 of the Act,



which are material to find out the legal presumption, which is casted on the accused/respondent with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondent, the said provisions are quoted hereunder for better appreciation:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been, presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;



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(b) the payee or the holder in due course. of the cheque as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

139. Presumption in favour of holder.

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

13. The complainant is drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondent to prove that the cheque, which is the subject matter of the present appeal was not issued towards the discharge of any debt or liability and in the absence of such proof, necessarily, the rigours of Section 138 of the Act would



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14. In this regard, a careful perusal of the order passed by the court below reveals that the petitioner has returned the promissory notes to the respondent even before settling the loan and the said fact cannot be acceptable for the reason that while the respondent and his wife jointly signed in the promissory note and having joint bank account, without getting signature from her, he only signed the cheque and the petitioner stated that no one was signed in the promissory note as a witness. The said statement made by the petitioner is also not acceptable. The court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheque was claimed to have been misused by the petitioner, however, there are no materials to show that such is the case. The court below has held, the petitioner has not proved his case beyond reasonable doubt, and the cheque was not issued for discharging legally enforceable debt.

15. In this backdrop, it is the duty of the petitioner to establish that the cheque was issued for discharging legally enforceable debt. Though the petitioner has examined as P.W.s 1 and he has spoken about the cheque, which was dishonoured. PW1 in his deposition stated that the respondent has issued a



blank cheque and for filing the complaint, the complainant has filled up the cheque in front of the respondent.

16. First of all, the presumption available u/s 139 has to be rebutted by the accused, whereinafter, a duty is cast on the complainant to establish that the cheque, which stood dishonoured, was issued for the purpose of discharging a legally enforceable debt. In the case on hand, during the cross examination through the evidence of P.W.1 has not established that the date of issuance of the cheque and also the complainant has admitted that the respondent has issued a blank cheque and for filing the case, the complainant himself filled up the cheque in front of the respondent. Though a finding has been rendered by the court below that the complainant has not established that the cheque was issued for legally enforceable debt and hence, the complaint was dismissed.

17. When the complainant has not established that there exists a legally enforceable debt, which has to be paid by the respondent for which the cheque was issued, which has since been dishonoured, the mere dishonour of the cheque alone cannot form the basis to attract Section 138 of the Act, more so, when it is the case of the respondent that the cheque, which was not given for the present transaction and it has been misused by the complainant.



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18. To take shelter under the presumption provided for u/s 139 of the Act, the complainant has to first establish that the cheque was issued for discharging a legally enforceable debt, meaning thereby, that the debt should first stand established, which alone would go to show that there is a legally enforceable debt and towards the discharge of the said debt, the cheque was issued, which could be presumed and hence, the complainant cannot enforce Section 138 and the rigours of Section 139 of the Act would not stand attracted to the case on hand.

19. Under these circumstances, this Court finds that the respondent has rebutted the presumption by preponderance of probabilities by way of cross examination of the complainant. The trial Court rightly appreciated the entire evidence independently and came to the conclusion that the respondent has not committed the offence under Section 138 of NI Act and rightly dismissed the case.

20. On reading of the entire evidence, it is seen that the respondent has admitted the execution of the cheque and he has rebutted the statutory



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presumption in the manner known to law. This Court, does not find any perversity in the judgment passed by the learned trial court in STC.No.29 of 2020 dated 24.07.2023 and there is no compelled circumstances to interfere with the judgment.

21. Accordingly, this Criminal OP. is dismissed. Consequently, connected criminal appeal is rejected at the SR stage itself.

24.04.2024

Index:Yes/No
Speaking/Non speaking order
rli

To

The Judicial Magistrate, Fast Track Court No.2, Erode.



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M.DHANDAPANI . J,

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