



Crl.A.No.438 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM:

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

Crl.A.No.438 of 2024

Akshay Sarin HUF,
Represented by Karta

... Appellant/Complainant

Vs.

1.M/s.Shanaya Telefilms (P) Ltd.,
Rep. by its director Padam Kumar,
603, Building No.13,
Madha Complex, Oshiwara
Andheri (West), Mumbai – 400 053,
Maharashtra.

2.Mr.Padam Kumar

... Respondents/Accused

Petition filed under Section 378 of Code of Criminal Procedure to set aside order dated 30.06.2023 in C.C.MNo.1060 of 2012 passed by the Metropolitan Magistrate, Fast Track Court at Magistrate Level – V, Saidapet, Chennai.

For Petitioner : Mr.A.Palaniappan



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JUDGMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in C.C.No.1060 of 2012 on the file of the Fast Track Court at Magistrate level-V, Saidapet, Chennai, in and by which the respondents herein were acquitted in the case u/s 138 of the Negotiable Instruments Act (for short 'the Act'), has filed the present appeal.

2. It is the case of the appellant/complainant that towards discharge of a part of the liabilities due and payable by all the accused to the complainant, the 2nd accused issued 2 cheques to the complainant bearing Cheque Nos.387429& 991171 dated 27.07.2011 for a sum of Rs.2,50,000/- &Rs.15,00,000/- respectively drawn at IndusInd Bank Limited Lokhandwala Branch, Andheri (West)-400 053. Both the cheques were duly signed by the 2nd accused in his capacity as the Director/Authorized Signatory of the 1st accused with a request to the appellant to present the said cheques. Accordingly, acceding to the request of the respondents,the said cheques were presented throughits bankers, HDFC Bank. R.K.Salai



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Branch, Chennai but the same was returned for the reason "Funds Insufficient" which was intimated through a memo dated 29.07.2011. Since the respondents deliberately failed to pay the amount, the appellant caused a legal notice dated 18.08.2011 to all the accused calling upon the appellants to pay certain amount to the respondents and the respondents while acknowledging the receipt of the same on 23.08.2011, issued reply to the said notice denying their liability. Therefore, left with no other alternative, the complaint was filed by the appellant for an offence u/s 138 of the Act.

3. Upon examination of the complainant on oath u/s 200 Cr.P.C. and perusing the records, the court below, finding a prima facie case being made out, issued summons to the respondents and upon appearance, were provided with a copy of the complaint and the respondents pleaded not guilty.

4. On the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-13. No witnesses were examined on the side of the respondents nor any documents were marked. The trial court,



appreciating the materials available on record, held that the appellant has not established that there was a legally enforceable debt for which the cheque was issued, which was dishonoured and also failed to prove that the cheque was issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondents, aggrieved by which the present appeal has been filed.

5. Learned counsel appearing for the appellant submitted that the cheques which were issued by the respondent, stood dishonoured and the notice sent by the appellant to the respondents u/s 138 of the Act did not evince any reply from the respondent, which clearly shows that they have not denied their liability. It is the further submission of the learned counsel that the 2nd respondent being the authorized signatory of the 1st respondent has not denied his signature in Exs.P-1 & P-2, which cheques were dishonoured and returned with endorsement “Funds Insufficient”. Therefore, the dishonour of Exs.P-1 & P-2 would definitely attract all the ingredients of Section 139 of the Act. However, all those facts have not been properly considered by the court below while passing the impugned order acquitting



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the respondent and, therefore, interference is warranted with the findings recorded by the court below.

6. Since, no adverse order is being passed against the respondents, notice to the respondents is dispensed with.

7. 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 Sahebagouda 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 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”,



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“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 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 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)

8. 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 reappraise the evidence available on record to render a finding. However, in reappraising 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.

9. 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



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out whether the view arrived at by the trial court is based on the materials available on record.

10. Ex.P-1& Ex-P-2 are the cheques, which are alleged to have been issued by the respondents towards the discharge of the liability to the appellant. However, it is the case of the respondents that the cheques, in blank, were given to the appellant by the respondents only as a security relating to previous transaction between them which has been misused by the appellant.

11. 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/respondents with regard to the cheque being issued for discharging a legally enforceable debt, which ought to be rebutted through materials to absolve the respondents, 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."



12. The appellant is drawing inspiration from the presumption provided for u/s 139 of the Act to impress upon this Court that it is for the respondents to prove that the cheques, 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 stand attracted.

13. In this regard, a careful perusal of the order passed by the court below reveals that the court below had embarked upon a careful analysis of the materials placed before it and had come to the conclusion that though the cheques were dishonoured, however, there is no material placed by the appellant to show that it was towards the discharge of a legally enforceable debt.

14. It is further evident from the order passed by the Court below that there are entries to the extent of Rs.2,00,000/-, Rs.15,00,000/- and Rs.50,000/- in the account of the respondent, yet there is no material or statement of account to show the amount that was given by the complainant



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to the respondent and the part amount, if any, discharged by the respondent. In fact, except for an averment that the cheques were issued towards discharging a part of the liability, there is no other material to show the exact amount, which was given by the complainant and to which extent the respondent has given the cheques towards the discharge of the amount.

15. Further, it is to be noted that promissory notes have been executed by the respondent towards the amount alleged to have been received from the complainant, however, the said promissory notes have not been marked. It is the specific case of the respondent that the cheques, which are alleged to have been dishonoured were given for the purpose of security, which were used by the complainant without the knowledge of the respondent. In this regard, the promissory notes would have been the best evidence to negate the contention of the respondent and in the absence of marking the said documents, the contention of the respondent deserves acceptance.



16. The respondent is specifically disputing the fact that the cheques were not issued for the purpose of discharging a legally enforceable debt and failure on the part of the complainant to prove that there subsists a legally enforceable debt and that the cheques were issued by the respondent for the purpose of discharging the legally enforceable debt, the court below was right in rejecting the complaint of the appellant herein.

17. In the absence of any material to show the details of the loans given to the respondent, including the break up of the loans given on various dates by the appellant to the respondent and also the promissory notes executed by the respondent, the mere dishonour of the cheques cannot be said to have been issued by the respondent towards a legally enforceable debt.

18. Therefore unless the appellant discharges his burden by giving the details with regard to loan taken and the dates on which they were given and also establishing that the cheques were given for the purpose of discharging a legally enforceable debt, the mere dishonour of cheques



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alleged to have been given by the respondent cannot be the basis to hold that
a case u/s 138 of the Act is made out.

19. For the reasons aforesaid, the impugned order passed by the
court below does not deserve any interference and the same stands affirmed.
Accordingly, all the appeal fails and the same is dismissed.

18.04.2024

NHS

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No

To
The Metropolitan Magistrate,
Fast Track Court at Magistrate Level – V,
Saidapet, Chennai.

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M.DHANDAPANI, J.

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