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Crl.A.No.3 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM :

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

Crl.A.No.3 of 2024

Veerapandian

... Appellant/Complainant

Vs.

S.V.Kalaivani

... Respondent/Accused

Prayer : Criminal Appeal filed u/s.378 of the Code of Criminal Procedure, seeking to set aside the order of acquittal made in S.T.C.No.1050 of 2021 on the file of the Special Metropolitan Magistrate, XVI Small Causes Court, at Chennai dated 15.09.2023 and convict the respondent/accused.

For Appellant : Mr.K.Balaji

For Respondent : Mr.P.Alexander

JUDGMENT

The unsuccessful complainant, having lost before the trial court, has assailed the said order, passed in S.T.C. No.1050 of 2021 on the file of



Crl.A.No.3 of 2024

WEB COPY

the Special Metropolitan Magistrate, XVI Small Causes Court at Chennai, dated 15.09.2023, in and by which the respondent was acquitted in the case u/s 138 of the Negotiable Instruments Act, 1881 (in short 'the Act'), has filed the present appeal.

2. It is the case of the appellant that the respondent is well known to the appellant and using the said acquittance, the respondent borrowed a sum of Rs.2,00,000/- from the appellant on 20.07.2018 and executed a Debt Agreement on the same day. After borrowing the said sum, the respondent failed to repay the amount and after repeated requests and demands, the respondent issued two cheques in favour of the appellant viz., cheques bearing Nos.099759 and 099760, dated 17.09.2018 for a sum of Rs.1,00,000/- each drawn on Canara Bank, Chennai TN Pollution Control Board Branch, Chennai – 600 032 towards the discharge of her liability. As per the instructions of the respondent, the appellant presented the said cheques for collection, however, the said cheques were returned dishonoured with an endorsement "Funds Insufficient" vide Return Memo dated 19.09.2018.



Crl.A.No.3 of 2024

WEB COPY

3. Thereafter, the appellant caused a legal notice to the respondent dated 11.10.2018 intimating the dishonour of cheques and calling upon her to repay the aforesaid due under the said cheques. Inspite the service of notice on 15.10.2018, the respondent has neither come forward to repay the said amount nor sent any reply notice. Therefore, left with no other alternative, the complaint was filed by the appellant as against the respondent for an offence u/s 138 of the Act before the trial court in S.T.C.No.1050 of 2021.

4. 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 respondent and upon appearance, was provided with copy of the complaint and the respondent pleaded not guilty.

5. On the side of the appellant, the appellant examined himself as P.W.1 and marked Exs.P-1 to P-6. On the side of the respondent, the respondent examined herself as D.W.1 and Exs.D-1 and D-2 were marked.



Crl.A.No.3 of 2024

WEB COPY

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 cheques were issued, which was dishonoured and also failed to prove that the cheques were issued by the respondent for discharging a legally enforceable debt and, accordingly, acquitted the respondent, aggrieved by which the present appeal has been filed.

6. Learned counsel appearing for the appellant submitted that the respondent has not disputed her signature in the cheques, which were issued by her, which stood dishonoured and she has also not disputed the execution of debt agreement, which clearly shows that there is a legally enforceable debt, which has not been discharged by the respondent. It is the further submission of the learned counsel that the court below had clearly held that the cheques, which were alleged to have been given to the appellant by D.W.1 has not been established by the respondent and had clearly held that it had not been misused by the appellant and that being the case, a duty is cast upon 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 cheques were issued for discharging the legally



Crl.A.No.3 of 2024

enforceable debt.

WEB COPY

7. It is the further submission of the learned counsel that there may be some contradiction in the complaint as well as the cross-examination. However, the minor contradiction will not hold that the appellant not proved the case as against the respondent/accused. Once the presumption is in favour of the appellant, it is the duty of the respondent/accused to rebut the presumption. However, on erroneous consideration, the trial court dismissed the complaint by acquitting the respondent, which is wholly unsustainable. Therefore, interference is warranted with the findings recorded by the court below.

8. Learned counsel appearing for the respondent submitted that, it is duty of the appellant to establish that there is a legally enforceable debt, for which, instruments were given in favour of the appellant. However, in the present case, in the complaint, the appellant claims that the respondent borrowed a sum of Rs.2,00,000/- on 20.07.2018. After repeated requests, the respondent issued two cheques on 17.09.2018, however, such a statement is contrary to deposition of the appellant in his cross-



Crl.A.No.3 of 2024

WEB COPY

examination. In the cross-examination, the appellant admitted that the two cheques, which were marked as Ex.P.2 and Ex.P.3, were issued in favour of the appellant on 20.07.2018 along with debt agreement/Ex.P.1. Further, the appellant himself admitted that the date in the cheques was filled by him, whereas he claims that he does not know how to read and write in his deposition before the trial court. Further, the appellant was not able to prove before the trial court that he has the capacity to advance such amount to the respondent. However, in the cross examination, he deposed that he was employed as a Mason on daily wages basis and earning a sum of Rs.700/- per day and source of fund was not properly established before the trial court. All those things were cumulatively considered by the trial court and acquitted the respondent, which cannot be interfered with. Accordingly, he prays for dismissal of the appeal.

9. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record.

10. Time and time again, the scope and power of the High Court to



Crl.A.No.3 of 2024

WEB COPY

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 [Chandrappav. 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, reappraise 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



WEB COPY



Crl.A.No.3 of 2024

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 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:

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“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



WEB COPY



Crl.A.No.3 of 2024

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)

11. 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



Crl.A.No.3 of 2024

WEB COPY

is within its realm to reappreciate 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.

12. 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.

13. The Ex.P.2 and Ex.P.3 are the cheques, which are alleged to have been issued by the respondent towards the discharge of the liability to the appellant. However, it is the case of the respondent that the cheque, in blank, was given to the appellant by D.W.1 for security purpose and it has been misused by the appellant.



WEB COPY

14. 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;

(b) the payee or the holder in due course of the cheque as the case may be, makes a demand for the



WEB COPY



Crl.A.No.3 of 2024

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."

15. 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 respondent to prove that the cheques, which are 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.

16. In this regard, a careful perusal of the order passed by the court below reveals that the appellant was working as a mason. It is alleged that



Crl.A.No.3 of 2024

WEB COPY

the respondent had borrowed a sum of Rs.2,00,000/- from the appellant, for which, she had issued cheques and when the cheques were presented for collection, the same was returned, thereby the appellant filed complaint. It is seen from the records that the appellant claimed in his complaint that the respondent borrowed a sum of Rs.2,00,000/- from the appellant on 20.07.2018 and issued cheques on 17.09.2018, however, in the cross-examination, he deposed that the respondent issued cheques on 20.07.2018. It is pertinent to note the avernments made in respect of date of issuance of cheques in the complaint is contrary to his deposition made in the cross-examination. Further, there is no material to show the financial capacity of the appellant to advance the said amount to the respondent. In the absence of any material to prove the financial capacity of the appellant to advance such amount to the respondent, which was not repaid by the respondent, for which, the cheques were given by the respondent, the case of the appellant cannot be sustained. When the appellant is not able to establish that there exists a legally enforceable debt towards the discharge of which the cheques were issued, the case of the appellant that the dishonour of the cheques would entail an action u/s 138 of the NI Act is wholly unsustainable. Therefore, the trial court has arrived



Crl.A.No.3 of 2024

at a conclusion that there is no legally enforceable debt.

WEB COPY

17. 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.

18. However, it is to be pointed out that the dishonour of cheque would attract the provisions of Section 138 of the Act only when it has been issued for the purpose of discharging a legally enforceable debt.

19. When the appellant 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 cheques, which were given for the security purpose has been misused cannot be brushed aside.



Crl.A.No.3 of 2024

WEB COPY

20. To take shelter under the presumption provided for u/s 139 of the Act, the appellant 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.

21. For the reasons aforesaid, the impugned order passed by the court below does not deserve any interference and the same stands affirmed. Accordingly, the Criminal Appeal is dismissed and the order passed in S.T.C.No.1050 of 2021 on the file of the learned Special Metropolitan Magistrate, XVI Small Causes Court, Chennai, dated 15.09.2023 is confirmed.

02.07.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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To

The Special Metropolitan Magistrate, XVI Small Causes Court, at



Chennai.

WEB COPY



Crl.A.No.3 of 2024