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Crl.A.No.807 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.807 of 2018

T.Viswanathan

... Appellant

vs.

Sumathi

... Respondent

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973, praying to set aside the judgement and orders dated 29.10.2018 passed in C.A.No.175 of 2017 by the II Additional District Judge, Fast Track Mahila Court, Erode, reversing the judgment and orders dated 08.06.2017 passed in S.T.C.No.272 of 2015 by the Judicial Magistrate, Fast Track Court No.II, Erode.

For Appellant : Mr.M.Vignesh

For Respondent : Mr.M.Guruprasad

J U D G M E N T

Challenging the order of acquittal dated 29.10.2018 passed by the II Additional District Judge, Erode, in C.A.No.175 of 2017, the present criminal appeal is filed by the appellant/complainant.



2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court and at appropriate places, their rank in the present criminal appeal would also be indicated.

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

Tmt.Sumathi, the accused, borrowed a sum of Rs.2,20,000/- from the complainant to meet her urgent family requirements. In order to discharge the loan amount, she issued a Cheque (Ex.P1) bearing number 190495, dated 17.06.2014 drawn on Karnataka Bank, Ganthiji Road, Erode Branch, for a sum of Rs.2,20,000/- in favour of the complainant. When the cheque was presented by the complainant for collection on 04.07.2014 through his bankers, viz., Federal Bank, Erode Branch, the same was returned for the reason "Insufficient Funds", as is seen from the cheque return memo (Ex.P2) dated 05.07.2014. Thereafter, the complainant issued a statutory notice dated 11.07.2014 (Ex.P3) through his counsel to the accused calling upon her to pay the amount due under the Cheque (Ex.P1) within a period of fifteen days from the date of receipt of the notice. According to the complainant, though the accused received the said notice on 16.07.2014, as is evidenced by the postal



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acknowledgment card (Ex.P5), the accused did not come forward to make good the payment and did not also send any reply notice.

4. Therefore, the complainant filed a private complaint under Section 200 of the Code of Criminal Procedure before the Judicial Magistrate, Fast Track Court No.II, Erode in S.T.C.No.272 of 2015 against the accused for an offence punishable under Section 138 of Negotiable Instruments Act, 1881. The learned Judicial Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act and issued summons to the accused under Section 204 Cr.P.C. On the appearance of the accused, the Judicial Magistrate furnished copies of the records to her under Section 207 of the Code of Criminal Procedure. When the accused was questioned with regard to the substance of accusation made in the complaint against her, she pleaded not guilty. Therefore, the case was posted for trial.

5. In order to prove the case, the complainant examined himself as P.W.1 and marked Ex.P1 to Ex.P5. When the accused was questioned under Section 313(1)(b) of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against her, she denied of having



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committed any offence. However, she did not examine any witness on her side.

6. The learned Judicial Magistrate, 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 one year and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of three months under Section 255(2) of Cr.P.C., vide her judgement and orders dated 08.06.2017.

7. Aggrieved over the same, the accused filed an appeal in C.A.No.175 of 2017 before the II Additional District Judge, Erode. The learned District Judge found the accused not guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and acquitted her, vide his judgement and orders dated 29.10.2018. Aggrieved over the same, the present criminal appeal is filed by the appellant/complainant.



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8. Heard Mr.M.Vignesh, learned counsel appearing for the appellant/complainant and Mr.M.Guruprasad, learned counsel appearing for the respondent/accused.

9. Mr.M.Vignesh, learned counsel appearing for the appellant/complainant would contend that when the accused had not denied her signature on the cheque and did not also issue any reply notice, the Lower Appellate Court had wrongly acquitted the accused, without taking into consideration the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Moreover, when the accused had contended that she issued the cheque in favour of one Govindasamy as a security for the loan obtained by her during 2012 and handed over the cheque (Ex.P1) to him. She did not examine the said Govindasamy to prove her contention. In the circumstances, the Lower Appellate Court had committed an error in acquitting the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Therefore, he prayed for setting aside the judgment and orders passed by the Lower Appellate Court.



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10. Per contra, Mr.M.Guruprasad, learned counsel appearing for the respondent/accused would contend that P.W.1 had lent a huge sum of Rs.2,20,000/- to the accused even without knowing the door number of her house. It is also his contention that the complainant did not get any supporting documents like promissory note etc., from the accused before lending a sum of Rs.2,20,000/- and these aspects have been considered by the Lower Appellate Court and had rightly held that the complainant had not proved his case.

11. At the outset, it may be observed that the accused admitted her signature on the cheque (Ex.P1). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved. The presumption is about the existence of legally enforceable debt.

12. The contention of the accused is that she actually obtained a loan from one Govindasamy during 2012 and issued the cheque (Ex.P1) to him as security. Though she repaid the entire loan amount to Govindasamy, he did not return the cheque and on the contrary, the said



cheque was misused by the present complainant in order to file a false case against her.

13. It is pertinent to point to out that the accused though was in receipt of the statutory notice, did not bother to send any reply notice mentioning this aspect to the complainant. Only during the course of cross examination, it was suggested to P.W.1 that the cheque issued to Govindasamy was misused by him. P.W.1 stoutly denied this suggestion. In the circumstances, the accused had failed to examine Govindasamy to prove her contention. The Lower Appellate Court had acquitted the accused mainly on the following grounds:-

- (i) The complainant could not state the door number of the house where the accused is residing.
- (ii) The complainant did not get any supporting documents like promissory note at the time of lending a sum of Rs.2,20,000/- to the accused.

14. A perusal of the cross examination of P.W.1 shows that the accused was introduced to him by one Govindasamy, who is a teacher working along with respondent/accused. Therefore, it cannot be stated that the complainant does not know the respondent/accused. Moreover,



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the complainant had clearly stated that the accused is residing in Periyar Nagar, Erode. Merely because, he could not remember the door number of her house, at the time of his cross examination in the Trial Court, it cannot be stated that the complainant does not know where the accused is residing. The Lower Appellate Court had committed an error in arriving at a conclusion that the complainant even without knowing the address of the accused had lent a sum of Rs.2,20,000/- to her.

15. The complainant had thought that it is enough to get a cheque from the accused and the accused also did not deny the signature on the cheque. The Lower Appellate Court had gone wrong in concluding that since a pro-note was not obtained from the accused, the case of the complainant stands disproved. The Trial Court Judge had analysed each and every aspect of the case in detail and on the other hand, the Lower Appellate Court committed a grave error in acquitting the accused. Therefore, the accused is found guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for a period of three months.



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16. In the result,

WEB COPY (i) The Criminal Appeal stands allowed.

(ii) The judgment and orders dated 29.10.2018 passed by the II Additional District and Mahilir Neethimandram (Fast Track Mahila Court) Judge, Erode, in C.A.No.175 of 2017, is set aside.

(iii) The respondent/accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.5,000/- in default, to undergo simple imprisonment for a further period of three months under Section 255(2) of Cr.P.C.

(iv) The respondent/accused shall surrender before the Judicial Magistrate, Fast Track Court No.II, Erode, within 15 days from the date of receipt of a copy of the order/uploading of the order, failing which, the Trial Court shall take appropriate steps to secure her presence for undergoing the sentence.

20.06.2024 Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
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R.HEMALATHA, J.

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To

- 1.The Additional District Court
(Fast Track Mahila Court) Judge, Erode,
- 2.The Judicial Magistrate,
Fast Track Court No.II, Erode
- 3.The Section Officer, Criminal Section,
High Court, Madras.

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