IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.337 of 2014

R.Vasudeva Gupta ... Appellant

vs.

E.A.Balakrishnan ... Respondent

PRAYER: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, against the judgment and orders dated 13.02.2014 passed in C.C.No.3445 of 2008 by the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai.

For Appellant : No Appearance

For Respondent : No Appearance

JUDGMENT

Challenging the order of acquittal dated 13.02.2024 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in C.C.No.3445 of 2008, 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:

The complainant is a flat promoter and he is doing business in the name and style of M/s. Sagar Foundation. He took a joint venture with the owners of the houses bearing Door No.8 and 9 and developed the same to various apartments. An agreement was entered into by the complainant with the purchasers. The accused purchased a flat in the first floor of the said apartment and he had to pay a sum of Rs.90,000/- towards balance sale consideration. According to the complainant, the accused had also to pay another sum of Rs.94,210/- towards GST. On 29.12.2007 the complainant approached the accused and requested him to make good the payment and the accused in turn handed over the following three cheques (Ex.P1 to Ex.P3) drawn on ICICI Bank, Chennai Branch:-

Sl.No.	Date	Cheque No.	Amount in Rs.
1	25.01.2008	042460	Rs.80,000/-
2	25.01.2008	042461	Rs.10,000/-
3	05.02.2008	042459	Rs.94,210/-

When the cheques were presented by the complainant for collection through his bankers, viz., Karur Vysya Bank, Armenian Street Branch, Chennai, on 24.03.2008, the same were returned for the reason "Payment stopped by the Drawer', as is evidenced by the cheque return memos dated 26.03.2008 (Ex.P4 to Ex.P6). Thereafter, the complainant issued a statutory notice dated 05.04.2008 (Ex.P7) to the accused calling upon him to pay the amount due under the Cheques (Ex.P1 to Ex.P3) within a period of 15 days from the date of receipt of the notice. Though the accused received the said notice, as is evidenced by the postal acknowledgment cards (Ex.P8 and Ex.P9), he did not come forward to make good the payment. However, he sent a reply notice dated 05.04.2008 (Ex.P10), which according to the complainant contained false allegations. The complainant issued a rejoinder dated 21.04.2008 (Ex.P11) to the accused. There were also exchange of notices between the parties subsequent to the rejoinder (Ex.P11).

4. Therefore, the complainant filed a private complaint under Section 200 Cr.P.C., before the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in C.C.No.3445 of 2008 against

the accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Metropolitan 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 Metropolitan Magistrate furnished copies of the records to him under Section 207 Criminal Procedure Code. When the accused was questioned with regard to the substance of accusation made against him, he pleaded not guilty. Therefore, the case was posted for trial.

5. The complainant examined himself as PW.1 and two other witnesses as PW.2 and PW.3 and marked Ex.P1 to Ex.P16.

6. The accused, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did not examine any witness on his side, but marked Ex.R1 to Ex.R4.

7. The learned Metropolitan Magistrate, after analysing the oral and documentary evidence on record, found the accused not guilty of the

offence punishable under Section 138 of the Negotiable Instruments Act and acquitted him under Section 255(1) Cr.P.C., vide his judgment dated 13.02.2014, as against which, the present criminal appeal is filed by the complainant.

8. It is seen from the records that the accused had not denied his signature on the cheques (Ex.P1 to Ex.P3). Once the signature is admitted, there is a presumption under Sections 118 and 139 of Negotiable Instruments Act, 1881, unless the contrary is proved.

9. However, in the instant case, the complainant in his complaint had specifically stated that the accused is due and liable to pay a sum of Rs.90,000/- to him towards the purchase of the first floor flat. According to him, the accused had paid only a sum of Rs.31,47,150/-. However, it is seen that he did not adduce any evidence to substantiate his contention in this regard especially when the accused in his notices (Ex.P10, Ex.P12 and Ex.P13) had denied his liability.

10. The complainant is a flat promoter and he has sold various apartments to different persons. In the circumstances, he would have

maintained accounts for payment of amounts for each and every flat. The complainant had failed to adduce relevant Account Books to substantiate that the accused is due and liable to pay a sum of Rs.90,000/- to him towards balance sale consideration.

11. The contention of the complainant is that the accused has to pay a sum of Rs.94,210/- towards payment of GST and pressed into service Ex.P15, which according to him, is a document for payment of GST to the Government by him. A careful scrutiny of Ex.P15 shows that it pertains to some other buyer. The complainant (PW.1) also during the course of cross examination, admitted this.

12. The Trial Court had analysed all these aspects and had come to a definite conclusion that the accused is not guilty of the offence punishable under Section 138 of the NI Act. It is to be noted that existence of legally recoverable debt is a matter of presumption under Section 139 of NI Act, but can be rebutted by the accused with valid evidence. In the instant case, the accused by way of sending reply notices and eliciting certain vital aspects from P.W.1 during cross examination had successfully rebutted the presumption. In the circumstances, the order of acquittal passed by the Trial Court cannot

be assailed.

Accordingly, the Criminal Appeal stands dismissed.

22.07.2024

Index : yes/no
Speaking /Non speaking Order
Neutral Citation : yes / no
dm

To

1.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

2.The Section Officer, Criminal Section,
High Court, Madras.

R.HEMALATHA, J.

dm

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