



Crl.A.(MD).No.102 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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Selvamony

.. Appellant/Complainant

Vs.

Pon Raj

..Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, praying to allow the appeal and set aside the judgment in C.C.No.260 of 2012 dated 21.03.2013 of Judicial Magistrate (Fast Track) Court No.II, Nagercoil, Kanyakumari District.

For Appellant : M/s.M.Kamalini
Legal Aid Counsel

For Respondent : Mr.Ananth C.Rajesh

JUDGMENT

The present Criminal Appeal against the judgment of acquittal is preferred by the complainant, who has lodged a private complaint under



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Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') against the respondent for dishonouring the cheque issued for a sum of Rs.2,00,000/- to discharge the enforceable liability.

2. The issuance of cheque to the complainant and the enforceable liability had been disputed by the respondent right from the beginning, i.e., from the reply notice and by letting in evidence and also by cross-examining the complainant.

3. The Trial Court has found that the accused had probalised his defence and had rebutted the statutory presumption under Section 139 of the NI Act and the complainant, on the contrary, has failed to prove the fundamental act of borrowing and therefore, dismissed the complaint.

4. The present Criminal Appeal is preferred by the complainant challenging the findings of the Trial Court against acquittal.



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5. The learned counsel, who had filed the appeal, failed to turn up when the matter was taken up for final hearing. Hence, M/s.M.Kamalini, learned counsel, was appointed by the High Court Legal Services Committee, as a legal aid counsel to assist the Court to decide the appeal. Accordingly, M/s.M.Kamalini, learned counsel appeared on behalf of the appellant and made her submissions.

6. The learned counsel for the appellant/complainant submitted that the Trial Court erred in holding that the accused has rebutted the statutory presumption, while the evidence let in by the accused does not clear the test of preponderance of probability. She also submitted that the signature in the cheque is candidly admitted by the accused. In fact, under Ex.D12, the respondent/accused informed his Bank that cheque leaves bearing Nos.893410 to 893419 were issued to one Rathinasamy due to proximity with him and the said Rathinasamy, who is a TWAD contractor. It is further stated that for his income purpose, a bank account was opened in the name of the accused and the entire transaction was done by the said Rathinasamy. To facilitate unhindered transaction, blank cheques were signed and handed



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over by the accused to the said Rathinasamy. Thereafter, there was some misunderstanding between the accused and the said Rathinasamy and therefore, the accused informed the Bank not to honour those cheques bearing Nos.893410 to 893419. However, the cheque, which is the subject matter of the complaint, bears No.893420 and the same was issued to discharge the debt of borrowing in the month of August 2007.

7. The learned counsel for the appellant further submitted that the said cheque was presented on 23.12.2008. After presentation of cheque and causing the statutory notice, the respondent/accused thought fit to inform the Bank again by way of a corrigendum to include the cheque number, which is subject matter of the complaint. Hence, it is an after thought and in order to get rid of the criminal prosecution, the corrigendum letter dated 21.07.2009, which was marked as Ex.D13, was sent by the accused/respondent. Hence, the learned counsel submitted that the Trial Court has erred in appreciating the evidence and erroneously considered Ex.D13, which is a document prepared after the cause of action for the complaint under Section 138 of NI Act arose.



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8. The learned counsel for the appellant also submitted that the reasoning given by the Trial Court to disbelieve the case of the complainant dehors the statutory presumption, is against law and facts. While the complainant is able to establish the fundamental act of issuance of cheque, its dishonour and the liability to pay, the Trial Court has given an undue advantage to the evidence let in by the defence to probabalise that the cheque was not issued to the complainant for discharge of any enforceable debt.

9. Per contra, the learned counsel for the respondent submitted that the complainant was unable to establish even the fundamental act that when and how the sum of Rs.2,00,000/- was lent to the accused. The source of lending two lakhs had also not been proved by the complainant. The proximity between Rathinasamy and the accused is admitted and the accused has probabalised that he is a stooge at the hands of the said Rathinasamy, who has misused the cheque given by the accused by filing a complaint under Section 138 of NI Act through the appellant/complainant.



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10. The learned counsel for the respondent further submitted that the Trial Court, after taking note of the fact that the complainant has failed to prove the averment that the accused has borrowed a sum of Rs.2,00,000/- from the complainant for meeting out his expenses for the construction of the house and repayment of interest, had held that for the first time, the complainant in the cross-examination, had deposed that a post date cheque was given by the accused on the date of borrowing and the cheque was given as a security for the loan. Therefore, the learned counsel for the respondent submitted that the Trial Court has rightly dismissed the complaint and therefore, there is no reason to interfere with the same, since the reasoning stated by the Trial Court for acquittal is a possible view.

11. This Court has given anxious consideration to the rival submissions made by the learned counsels on either side.

12. It is a case for the offence under Section 138 of NI Act. Though the complainant has stated that the cheque was issued to discharge a debt of Rs.2,00,000/- arising out of borrowing during the month of August 2007,



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apart from the cheque, which is marked as Ex.P1, dated 16.09.2008, there is no other documentary proof for the lending of Rs.2,00,000/-. As pointed out by the Trial Court, even the date of borrowing is not specified in the complaint or in the testimony of the complainant, who was examined as P.W.1. Apart from the complainant, the Bank Manager of the Federal Bank is yet another witness, who is competent only to speak about the presentation of the cheque and the return of the cheque, which is an admitted fact and also proved through Ex.P2 to Ex.P5.

13. The point for consideration in this case is whether the presumption under Section 139 of NI Act has been rebutted in the manner known to law to probabilise the defence.

14. For that purpose, the Trial Court has relied upon the contradiction in the complainant regarding the date of issuance of cheque that the complainant states as if the cheque for Rs.2,00,000/- was given on 16.09.2008 and the same was presented on 23.12.2008, whereas, in the cross-examination, the complainant admits that the cheque was given post



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dated at the time of borrowing itself as a security. If the cheque was given on the date it bears and the case of the complainant is to be accepted, then a question arises whether the alleged accrued interest is paid or not at the time of issuance of cheque and if paid, what is the proof and if not paid, why after more than a year, the cheque was issued only for the principal amount and not for interest.

15. That apart, another question arises as to why after receiving the cheque on 16.09.2008, it was presented after three months on 23.12.2008. The complainant has no answer for this query. This has probalised the defence that the cheque was given to a third party due to the proximity between the complainant and the third party Rathinasamy. The said cheque has been misused to harass the respondent. The view taken by the Trial Court to acquit the respondent is a probable view and with reasons. Therefore, in an appeal against acquittal, though any other alternate view may also be possibly taken up, it may be pitted against an accused, who had gained acquittal. Hence, the Criminal Appeal is dismissed.



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16. This Court appreciates the efforts taken by the learned counsel for the appellant appointed by the High Court Legal Services Committee to represent the appellant/complainant, for her valid assistance of this Court to arrive at the above decision.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

The Judicial Magistrate (Fast Track) Court No.II,
Nagercoil,
Kanyakumari District.



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DR.G.JAYACHANDRAN,J.

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