BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.03.2024

Coram

The Honourable Dr. Justice G.JAYACHANDRAN

Crl.A.(MD).No.334 of 2014

M.Pauldhas

....Appellant/ Complainant

vs.

G.Azhagarsamy

....Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, praying to set aside the Judgment dated 14.11.2014 made in STC No.569 of 2013 passed by the Judicial Magistrate No.I, Madurai, Fast Track Court, Magistrate Level, Madurai and allow this appeal and convict the accused and pass order of compensation under Section 138 of Negotiable Instrument Act.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : No appearance

JUDGMENT

This appeal against the acquittal preferred by the private complainant in a proceedings initiated under Section 138 of Negotiable Instruments Act.

2.The complaint alleges that the respondent Azhagarsamy borrowed a sum of Rs.50,000/- from the complainant Pauldhas on 19.02.2012 to meet out his urgent family expenses and agreed to return the money with 12% interest within 12 months. Two post dated cheques were given each for a sum of Rs.25,000/- drawn from the account maintained by the accused at ICICI Bank, Subramaniyapuram, Madurai. When the said cheques were presented for collection, both were returned with an endorsement as 'Funds Insufficient' along with a memo dated 22.02.2013. About the return of cheques, the accused was informed through notice dated 28.02.2013 in compliance of the provisions of the Negotiable Instruments Act. The accused replied on 21.03.2013 denying the liability as false. Hence, the complaint.

3.To prove the complaint, the complainant was examined as P.W.1 and 9 documents were marked in support of the complaint. Two documents were marked on the side of the defence during cross examination of the complainant.

4.On appreciation of the evidence, the trial Court held that the complainant has suppressed the fact regarding the presence of his daughter at the time of lending the money and also the pendency of the money suit filed by the complainant against the accused in O.S.No.794 of 2013 on the file of the Principal Sub-Court, Madurai for the very same amount. The source of money and non-filing of income tax returns also has caused doubt over the complainant's case. The writing in the cheques in two different ink and the defence that the cheques were issued for the previous transactions took place in the year 2010, which were misused by the complainant, was accepted by the trial Court to dismiss the complaint and acquit the accused.

5.The appeal was filed on the ground that the trial Court judgment is perverse and against the principles laid down by catena of Judgments regarding offence under Section 138 of Negotiable Instruments Act and presumption under Section 139 of Negotiable Instruments Act. The accused having admitted the signature of the two subject cheques, the trial Court ought not to have dismissed the complaint. All the ingredients required to prove a complaint under Section 138 of Negotiable Instruments Act were fully complied by the complainant. Inspite of that, referring unconnected suit, which was instituted for recovery of money, which was lent against the pro-note in 2010, the trial Court has erroneously presumed that the subject cheques dated 19.02.2012 were issued as a security for the earlier debt incurred in the year 2010. The trial Court failed to take note of the fact that the reply notice issued on behalf of the accused does not whisper about the earlier suit or loan transaction which is entirely different transactions. However, only during the course of trial, such a defence is taken as an after thought and documents subsequent to the filing of the complaint were relied upon by the trial Court to disbelieve the case of the complainant. The Judgment of the trial Court to be interfered as perverse.

6.One Mr.S.Elangovan, learned counsel entered appearance for the respondent. But, for the past two hearings, there is no representation.

7.The learned counsel for the appellant/complaint also submits that inspite of notice to the client, there is no instruction and the Tabal returned as 'no such person'.

8.With the assistance of the counsel appearing for the appellant, this Court has perused the records.

9.The case of the complainant is that two post dated cheques, which are the subject matter of the complaint, marked as Exs.P.1 and P.2, were presented for collection and the same were returned for insufficient fund. The statutory notice marked as Ex.P.6 indicates that loan of Rs.50,000/- availed by the accused on 19.02.2012 with the promise to repay with 12% interest within a period of 12 months. The two cheques are for the principal amount and there is no whisper about the payment of interest, which would fortify the defence taken by the accused that the cheques were issued only as a security for the loan availed. The statutory notice is not only to repay the cheque amount but also interest at the rate of 12% and Rs.500/- towards cost. This claim *per se* does not satisfy the requirements contemplated under Section 138 of Negotiable Instruments Act since the notice is over and above the cheque amount. Be that as it may, in the reply, the respondent/accused has denied the execution of the pro-note and borrowal of the money. This reply notice though issued in response to the statutory notice dated 28.02.2013 marked as Ex.P.6, it does not speak anything about the cheques, which are subject matter of the complaint. On a reading of the statutory notice (Ex.P6) and the reply dated 21.03.2008 marked as Ex.P.9, this Court finds that both are so disjoined and does not fall within the statutory requirements. While the statutory notice marked as Ex.P.6 emanated from the complainant does not satisfy the requirements of the conditions found in Section 138 of Negotiable Instruments Act, the reply is still worse and it does not answer to the notice.

10.In the said circumstances, while scrutinizing the testimony of the complainant, which is bound to establish the foundation fact of issuance of cheques to discharge the legal liability, this Count finds that there is material contradiction in his case regarding the date of issuance of the cheques and admits that the cheques were post dated, issued as a security for the loan availed. In the cross examination, the notice issued by the complainant on 28.02.2013, pursuant to the suit instituted against the accused in O.S.No.794 of 2013, has been marked as Ex.D1 and in this notice, claim based on pro-note has been made. Probably, the reply which was marked as Ex.P.9, must be spoke in response to the said notice and not to the notice marked as Ex.P.6. In the cross examination, the complainant has categorically denied that he has not obtained any pro-note for the loan transaction, whereas, his testimony gets falsified by the contend of the notice marked as Ex.D.1 and the plaint marked as Ex.D2 in respect of O.S.No.794 of 2013. Though the other reasons stated by the trial Court for acquittal will not stand in the scrutiny of law, this singular point which exposes the falsity of the complaint, and suppression of facts coupled with lack of proof even by probability regarding the liability renders, the appeal deserves to be dismissed.

11.Accordingly, this Criminal Appeal stands **dismissed**.

08.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
skn

To

1.The Judicial Magistrate No.I, Madurai.

Dr.G.JAYACHANDRAN, J.

skn

Judgment made in
Crl.A.(MD).No.334 of 2014

08.03.2024