BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.08.2024**

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THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.56 of 2014

N.Duraipandian ... Appellant / Complainant

Vs.

L.Jeyalakshmi ... Respondent / Accused

Prayer : This Criminal Appeal is filed under Section 378 of Cr.P.C., to allow the appeal by setting aside the judgment of acquittal passed by the learned Judicial Magistrate (Fast Track), Srivilliputhur, made in C.C.No.69 of 2013 dated 18.12.2013.

For appellant : Mr.M.Solaisamy

For Respondent : Mr.R.Vijaya Lakshmi
Legal Aid counsel

J U D G M E N T

This Criminal Appeal is filed to allow the appeal by setting aside the judgment of acquittal passed by the learned Judicial Magistrate (Fast Track), Srivilliputhur, made in C.C.No.69 of 2013 dated 18.12.2013.

2. The appellant herein filed a private complaint under Section 200 Cr.P.C., for the offences under Section 138 of Negotiable Instruments Act, against the respondent herein on the following averments:

The accused and the appellant are friends and in the course of time, they became very close and a sum of Rs.25 Lakhs was borrowed by the respondent from the appellant herein on 10.10.2012. The respondent herein promised that she will repay the amount shortly. She also executed a promissory note on that date. When the appellant / complainant demanded the money back towards the discharge of the liabilities, the respondent herein issued a cheque bearing No.003893 dated 13.03.2013 for the above said amount drawn on U.T.I Bank Ltd., Tirunelveli. It was presented for payment through the Indian Bank, Srivilliputhur Town. But the cheque was dishonoured as account closed. After completing the statutory formalities the appellant filed a private complaint.

3. Before the trial Court on the side of the complainant, two witnesses were examined and six documents were marked. On the side of the accused, one witness was examined and one document was marked. At the conclusion of the trial process, the trial Court came to the conclusion that the offences under Section 138 of Negotiable Instruments Act, is not made out

and acquitted the accused. Apart from that, the trial Court has also recorded a finding that offences under Section 420 of IPC is not made out and there is no ground for proceeding further against the respondent for the offences under Section 420 of IPC. Against which this appeal is preferred by the complainant.

4. Heard both sides.

5. Learned counsel for the appellant would submit that the respondent herein admitted the signature in the cheque. When there is clear admission on the part of the respondent then, naturally the presumption under Section 139 of Negotiable Instruments Act comes into operation. Simply because the respondent has issued the cheque which belongs to someone who does not have any account in the drawer's bank, cannot be said that offences under Section 138 of Negotiable Instruments Act, is not attracted. He would further submitted that the cheque issued by the respondent, is the subject matter of the complaint which belongs to some other person, issued the same in favour of the complainant. So this itself indicates the criminal intention on the part of the respondent to cheat the appellant. Therefore, by invoking Section 226 of Cr.P.C.,(old), trial Court ought to have permitted the appellant

herein to prove the offence again under Section 420 of IPC or would have punished the respondent herein for having committed offence since the materials were already available on record.

6. We will consider the second aspect of the submission later. Coming to the first aspect of the transaction between the parties, the learned counsel for the appellant would submit that the transaction is clearly admitted by the respondent, since she executed a pro-note on the date of borrowal itself namely on 10.10.2012. The above said pro-note is also produced by the appellant and marked as Ex.P1 on his side. Now we will see whether the above said transaction is established by the appellant herein. Simply because a pro-note was executed, no presumption can be drawn because the respondent denied the signature in the cheque.

7. It is the contention on the part of the respondent herein that her admitted signature in the acknowledgment card differs from the one found in Ex.P2. When there is a denial of signature by the respondent herein, it is the duty of the appellant herein to prove the same in accordance with law. More specifically, when the respondent does not own or did not own any account bearing No.2580101031842, U.T.I. Bank, Tirunelveli Branch. It is contended

by the respondent that on the date of issuance of cheque namely dated 13.03.2013, the name of U.T.I. Bank was changed. We can take the judicial notice that U.T.I. Bank was renamed as Axis Bank in the year 2007. Now the present cheque alleged to have been issued on 13.03.2013, using the U.T.I. Bank cheque, after seven years of name change. So this itself indicates that all is not well with the appellant herein. The old cheque has been used by the appellant herein for filing the complaint.

8. It is seen that no reply notice was issued by the respondent herein after receiving the statutory notice dated 26.03.2013. This also been projected by the appellant stating that if the disputed cheque was not issued by the respondent herein she would have sent the reply. But mere not sending a reply will not prove the case of the appellant. As mentioned above, the legal defects which were available were not properly cured by the appellant during the trial. So transaction itself is doubtful.

9. More so, when the capacity of the appellant to lend a huge amount of Rs.25 Lakhs is involved. He stated in his evidence that he has filed more than two cases of similar nature, doing real estate business by profession apart from doing agriculture. When a person lends a huge amount

of Rs.25 Lakhs, when admittedly the respondent did not own any property and only husband doing business, creates doubt with regard to the genuineness of the transaction itself. It was suggested by the respondent that the appellant is the binami of one Bayilvan.Krishnasmy Thevar. It is a transaction between the Bayilvan.Krishnasamy Thevar and the respondent for some several years prior to the complaint. By misusing the above said transaction, the present complaint has been filed. Learned counsel for the respondent would rely upon the judgment of the Hon'ble Supreme Court reported in ***(2010) 2 Supreme Court Cases (Crl) 218*** in the case of ***Jugesh Sehgal Vs Shamsher Singh Gogi*** for the purpose of arguments, that when the subject cheque does not belong to the respondent but to some other third party, the offence is not made out.

10. But we need not concentrate much on this contention since the basic and fundamental transaction itself creates doubt. P.W.2 is the witness to Ex.P1, namely the pro-note. He stated that he was present when Rs.25 Lakhs was borrowed by the respondent from the complainant and he signed in the documents as one of the attesting witnesses. He has admitted that he is the friend of the appellant and stated that the respondent was known to him through her husband. On the date of the transaction only she has seen the

respondent. But very reading of the contents of the pro-note does not inspire any confidence at all. The drawer signature found to be older than the contents. So the evidence of P.W.2 that everything was filled up by the respondent brought for signature to the complainant's house at the time of borrowal also, does not inspire any confidence.

11. For all these reasons, I am of the considered view that the foundational facts were not established by the appellant herein. Now coming back to the arguments advanced by the appellant that offence under Section 420 of IPC is made out and punishment ought to have been imposed upon him since the respondent as mentioned above has issued the cheque knowing fully well that it does not belongs to her. But this also does not arise, since the foundational facts are not established, more particularly. the signature of the respondent in the disputed cheque is denied. Moreover, the complaint was filed only under Section 138 of Negotiable Instruments Act. In no way in that complaint it has been stated that the respondent has cheated the complainant by misusing the cheque belongs to some other person. All of a sudden, during the course of argument, such a contention was raised. When the complainant does not mention the ingredients of offences under Section 420 of IPC, at the time of argument, no such surprise can be made.

12. For all those reasons, I find absolutely no error or illegality in the judgment of the trial Court. Accordingly, this Criminal Appeal is dismissed, confirming the judgment of the learned Judicial Magistrate (Fast Track), Srivilliputhur, made in C.C.No.69 of 2013 dated 18.12.2013.

30.08.2024

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

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To

1. The Judicial Magistrate (Fast Track), Srivilliputhur.

G.ILANGOVAN, J.

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