BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:01.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A(MD) No.91 of 2014

Gopinath ... Appellant/Complainant

-vs-

H.Rakesh ... Respondent/Sole Accused

PRAYER : Criminal Appeal filed under Section 378 of Criminal Procedure Code praying this Court to call for the records of the Judgment made in S.T.C.No.540 of 2010, dated 10.01.2014, on the file of learned Judicial Magistrate No.II, Tiruchirappalli, acquitting the respondent accused for the offences under Section 138 of Negotiable Instruments Act and set aside the same.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

This Criminal Appeal is filed against the order of acquittal preferred by the complainant, who filed his complaint under Section 138 of Negotiable Instruments Act against the respondent/sole accused.

2.When the matter is taken up for hearing today, there is no representation for the appellant either in person or through counsel, though advance list was published as early as on 19.02.2024 intimating the parties that the matter will be taken up for hearing today.

3.The sum and substance of the complaint is that the accused borrowed a sum of Rs.50,000/- from the complainant promising to repay it with interest and in discharge of the said debt Ex.P1 Cheque was issued for a sum of Rs.60,000/-. The said cheque is dated 22.2.2010 and when the same was presented for encashment, it was returned with an endorsement as insufficient fund. When statutory notice was issued to the accused, a reply was sent by the accused with untenable and false reasoning. Hence the complaint.

4.The trial Court, after appreciating the evidence let in on either side, had dismissed the complaint holding that the accised had rebut the presumption, whereas, the complainant has failed to prove the liability or the existence of the debt. Particularly, the trial Court has pointed out that neither in the complaint nor in the Chief examination of P.W.1, there is reference about the date on which the principal amount of Rs.50,000/- advanced to the accused. Neither the rate of interest been mentioned in the complaint. While so, for the principal of Rs.50,000/- the complainant has claimed Rs.10,000/- towards interest and pleaded that to discharge the said debt of Rs.50,000/- with interest, the subject cheque was issued. Whereas, the accused in the reply notice has contended that there was a business transaction between him and the complainant for five years and all the dues were already settled. The blank promissory note and cheque that has been given as security for the previous transactions has been misued after completion of buisness transaction.

5.The complainant aggrieved by the reasoning given by the trial Court to dismiss the complaint, is before this Court stating that the dismissal of the complaint initiated under Section 138 of Negotiable Instruments Act without considering the statutory presumption under

Section 139 of the Negotiable Instruments Act is erroneous. The Court below ought not to have acquitted the accused, in the absence of any satisfactory evidence to shift the burden of legal presumption. The issuance of the cheque and acceptance of transaction is sufficient to presume that the cheque was issued for enforceable debt. To rebut the evidence, the accused ought to have place evidence to the contrary. In the absence of any documentary or oral evidence, by the accused to rebut the presumption that there is legally enforceable debt, the complaint ought not to have been dismissed.

6.On a persual of the complaint, this Court finds that the liability has not been specified in the complaint, except stating that the accused had borrowed a sum of Rs.60,000/-and towards the payment of amount with interest, the subject cheque was issued for Rs.60,000/- The statutory notice which is marked as Ex.P4 also does not reveal when the principal amount of Rs.50,000/- was borrowed and how the money was paid to the accused. In the reply to the statutory notice which is marked as ExP6, the accused has specifically denied the allegation of transaction and also denied the issuance of cheque. It is specifically stated that due to the earlier financial transaction, blank cheques and promissory notes were given and inspite of clearing of the loans, those documents were not returned. The reply may not be sufficient to rebut the presumption of issuance of cheque after admitting the signature. However, the reason given by the trial Court that the complaint is bereft of details of the existing liability appears to be an acceptable reason. When in the reply itself, the liability has been denied, the complainant ought to have placed materials before the Court to prove the fundamental fact that the liability has arisen in a particular manner. Since the complainant has failed to place evidence to prove that there was liability in existence, the same is bound to be dismissed.

7.When the accused has specifically denied the liability in the reply, the complaint is bound to be dismissed for want of proof. The trial Court has rightly dismissed the complaint.This Court finds no reason to interfere with the said finding of the trial Court.

8.Accordingly, the Criminal Appeal is dismissed.

01.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No
vsn

To:

1.The Judicial Magistrate NO.II,
Tiruchirappalli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

DR.G.JAYACHANDRAN,J.

vsn

JUDGMENT MADE IN

CRL.A(MD) No.91 of 2014

01.03.2024