BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05/09/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.205 of 2019

Simson : Appellant/Respondent/Complainant

Vs.

Augastinal : Respondent/Appellant/Accused

Prayer: This Criminal Appeal is filed under Section 372 of Criminal Procedure Code against the judgment, dated 06/10/2018 passed in Criminal Appeal No.1 of 2011 on the file of the Principal Sessions Judge, Kanyakumari at Nagercoil, reversing the judgment, dated 01/12/2010 passed in CC No.124 of 2006 on the file of the Additional District Munsif Court, Padmanabapuram, Kanyakumari District.

For Appellant : Mr.G.Ramanathan

For Respondent : Mr.N.Pragalathan

JUDGMENT

This Criminal Appeal is filed against the judgment, dated 06/10/2018 passed in Criminal Appeal No.1 of 2011 by the Principal Sessions Judge, Kanyakumari at Nagercoil, reversing the judgment, dated 01/12/2010 passed in CC No.124 of 2006 by the Additional District Munsif, Padmanabapuram, Kanyakumari District.

2.**The facts in brief**:-

The private complaint was filed by the appellant herein under section 200 Cr.P.C against the respondent herein stating that she borrowed a sum of Rs.1,50,000/- on 15/09/2004 and issued a cheque on that day for the above said amount to discharge the loan. When the cheque was presented for payment, it was returned by the Banker on 10/11/2004. After complying the statutory formalities, he filed a private complaint before the trial court under section 138 of the Negotiable Instruments Act.

3.The trial court has taken cognizance for the offence under section 138 of the Negotiable Instruments Act and issued summons and on summons, the respondent appeared before the trial Court. The trial court questioned the accused by stating the substance of the complaint, she denied the accusation.

4.The appellant had examined himself as PW1 an marked Exs.P1 to P6. On the side of the accused, 3 witnesses were examined and marked one document.

5.After examination of the witnesses, the accused was examined under section 313(1)(b) of Cr.P.C, with regard to incriminating circumstances found in the prosecution witnesses. The accused denied the evidences.

6.At the conclusion of the trial process, the trial court found the accused guilty, convicted and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months for the offence under section 138 of the Negotiable Instruments Act.

7.Against which, the accused preferred appeal in Crl.A No.1 of 2011 on the file of the Principal Sessions Judge, Kanyakumari at Nagercoil. It allowed the appeal filed by the accused by setting aside the conviction and sentence passed by the trial court.

8.Aggrieved over the same, this criminal appeal is preferred by the complainant assailing the judgment of acquittal.

9.Heard both sides.

10.A judgment of reversal by the appellate court.

11.The learned counsel appearing for the appellant would submit that the respondent has not denied the signature in the dispute document; On the date of issuing of the cheque, a mortgage was also executed on 17/01/2001; But that transaction is entirely different from the present transaction; But the appellate court without considering the above said aspect rendered a judgment of acquittal.

12.Per contra, the learned counsel appearing for the respondent would submit that the judgment of acquittal passed by the appellate court was on proper appreciation of evidence, so, it requires no interference.

13.The learned counsel appearing for the appellant at the time of passing the judgment has produced the judgment passed in OS No.109 of 2010 and the decree.

14.As mentioned above, it is contended by the appellant that both are different transactions. This is the one of the reasons, which was taken into account by the appellate court in rendering the judgment of acquittal stating that the complainant namely the appellant herein being the professional money lender ought to have received any document evidencing the payment of Rs.1,50,000/- as loan amount, when he was very particular to get the mortgage deed for a mortgage amount of Rs.30,000/- from the husband of the respondent. The appellate court doubted the very consideration itself. On the basis of the above said single point. The date of mortgage between the appellant and the respondent's husband is 17/01/2001. Demanding repayment of the money, the appellant sent a notice on 03/08/2004, he filed the suit OS No.109 of 2010 before the Sub Court, Padmanapapuram on the mortgage deed dated 17/01/2001. The husband of the respondent remained *ex-parte* and an *ex-parte* decree was passed on 15/03/2011. On 04/07/2011, he discharged the mortgage money by paying the amount, which evidencing the same, it was registered before the Sub Registrar, Eraniel and the document was released. Now the present cheque said to have been issued. Loan was extended on 15/09/2004. Admittedly the mortgage, dated 17/01/2001 was still existing. On the date of the judgment of the trial court namely 01/12/2010, the suit in OS No.109 of 2010 was pending before the trial court.

15.As mentioned above, the mortgage was discharged on 04/07/2011 during the pendency of the appeal. In all fairness, the appellant ought to have informed the appellate court about the discharge made by the respondent's husband. But that was not done. As indicated by the trial court, no ordinary prudent man will lend such a huge amount, when already mortgage was subsisting between the appellant and the respondent's husband. This is sufficient enough to doubt the very passing of the consideration or legal liability as the case may be.

16.So, the appellate court has come to the probable conclusion stating that the above said circumstance is sufficient enough to rebut the presumption under section 139 of the Negotiable Instruments Act. When the circumstance stands against the appellant, he ought to have taken steps to prove the passing of the consideration independently for the cheque. Except himself, no other evidence was let in. So, there is every possibility that the present cheque was also issued as a security in addition to the mortgage loan. When the earlier transaction namely the mortgage itself is discharged, then there is no legally enforceable liability available in favour of the appellant namely the cause of action itself now become infructuous. But however, the appellant wants to prosecute the respondent for unknown reasons. The appellant has not discharged his burden of proof to bring home the guilt of the accused beyond reasonable doubt.

17.In view of the above said circumstances, the criminal appeal fails and the judgment of acquittal passed by the appellate court is confirmed. Accordingly, this criminal appeal is **dismissed.**

sd/-
05/09/2024

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/10/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

1 THE PRINCIPAL SESSIONS JUDGE,
KANYAKUMARI AT NAGERCOIL.

2 THE ADDITIONAL DISTRICT MUNSIF
PADMANABAPURAM, KANYAKUMARI DISTRICT.

ORDER
IN
CRL A(MD) No.205 of 2019
Date :05/09/2024

SS/SVR/SAR- /29/10/2024/ 7P/3C