BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.09.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.409 of 2019

R.Ramachandran ... Appellant/Respondent/Complainant

Vs.

V.Pandi ... Respondent/Appellant/Accused

Prayer: Criminal Appeal has been preferred under Section 372 Cr.P.C., to call for the records pertaining to the Judgment in C.A.No.57 of 2014, on the file of the IV Additional District and Sessions Judge, Madurai, dated 22.12.2017 in C.C.No.553 of 2012 on the file of the learned Judicial Magistrate Court, Melur, Madurai District and Set aside the same.

For Appellant : Mrs.T.Seenisyed Amma
for M/s.T.Lajapathi Roy & Associates

For Respondent : Mr.S.Ramasamy

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the Judgment in C.A.No.57 of 2014, on the file of the IV Additional District and Sessions Judge, Madurai, dated 22.12.2017 in C.C.No.553 of 2012 on the file of the learned Judicial Magistrate Court, Melur, Madurai District.

2.A private complaint under Section 200 Cr.P.C. was filed by the appellant herein against the respondent for convicting the respondent under Section 138 of the Negotiable Instruments Act with the following averments. The accused namely the respondent herein received a sum of Rs.4,50,000/- as a loan on 10.04.2012 from the complainant for the purpose of his domestic expenses. Towards the discharge of the above said amount, the accused issued a cheque bearing No.AS95/336517, dated 10.05.2012. Interest was fixed at 2% per month. At the request made by the respondent to present the cheque for collection, it was presented for payment on 16.05.2012 in Laxmi Vilas Bank, Melur Branch. That came to be returned dis-honoured, saying funds insufficient on the date of presentation itself. After completing the statutory formalities, the complaint was filed before the trial Court.

3.To substantiate the case, the complainant himself was examined as PW1 before the trial Court and 6 documents were marked. On the side of the respondent he himself was examined as RW1 and no documents were marked on his side.

4.At the conclusion of the trial process, the trial court found that the accused has committed offences under Section 138 of the Negotiable

Instruments Act and accordingly, sentenced him to undergo one year simple imprisonment. Apart from that imposed Rs.5,000/- as fine, in default to undergo three months simple imprisonment.

5.Against which, the respondent herein filed the appeal before the Appellate Court namely IV Additional District and Sessions Judge, Madurai in C.A.No.57 of 2014. That came to be allowed by the Appellate Court setting aside the conviction and sentence imposed upon the respondent. Against which, this appeal is preferred by the complainant.

6.Heard both sides.

7.It is a Judgment of reversal by the appellate Court namely IV Additional District and Sessions Judge, Madurai. Since it is a case of reversal judgment, we will go to the finding of the appellate authority, before entering into the finding of the trial Court.

8.There was total denial on the part of the respondent herein for having obtained loan amount from the appellant herein stating that the cheque was given as security, when he borrowed loan from one Kattuvabai, that was misused by the appellant herein for filing private complaint.

9.The Appellate Court went into the question of probability of loan transaction. According to the Appellate Court, the date, on which, the demand was made by the respondent for the loan is not mentioned by him in the complaint. From whom, the source was arranged is also not stated by him in the complaint. But, during the course of trial, he has stated that a part of amount was in his hands. The remaining was arranged from his own son. There is contra evidence also to the effect that he arranged money from some known persons. So finding this contradictions, Appellate Court doubted the very capacity of the appellant herein to lend the money. Moreover, the date of borrowal itself is also doubted stating that on the date of demand itself, the appellant gave the loan amount, which is also not probable. So these are the major findings of the Appellate Court.

10.For drawing presumption under Section 139 of the Negotiable Instruments Act, when the signature is admitted, the foundational facts must be established by the complainant. The first and foremost is the existence of legally enforceable liability. This is also highlighted by the Appellate Court in the judgment by drawing support from the Judgment of the Honourable Supreme Court made in the case of ***John K.Abrahim Vs/ Simon C.Abraham and another*** reported in ***2014 (1) Crime 66 (SC)***, wherein the following portion has been extracted.

> *19"------ " " It has to be stated that in order to draw the presumption under Section 118 read along with 139 of Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."*

11.Now as mentioned above, the transaction itself is doubted in view of the contrary statements made by the complainant before the trial Court, not only with regard to the date of demand and the date of loan, but also the source, from which, he mobilized the fund. So it assumes importance, more so, when there is a defence that the cheque was issued by the respondent to one Kattuvabai as security at the time of borrowing loan from him. In the complaint it has been stated by the appellant that money was borrowed by the respondent from him to discharge the loan amount to the said Kattuvabai. The necessity for obtaining this loan from the complainant for discharging another loan is also doubtful.

12.During the course of evidence also the complainant admits that Kattuvabai is known to him for about 20 years. Further admitted that no document was obtained from the accused on the date of loan. Cheque amount is also not a small amount. It is Rs.4,50,000/-. So it is highly unbelievable that without obtaining any document or execution of document such a huge amount was given as loan.

13.A simple cross examination was made to the respondent by the appellant stating that in the reply notice, he has not stated any thing like deposed during the chief examination and suggestion was made to him that he cheated the complainant by issuing the cheque. These are not the expectation from a complainant, who alleged to have lend Rs.4,50,000/- as loan amount. So this court as mentioned above doubted the genuineness of transaction.

14.When the capacity of the appellant is not established beyond the reasonable doubt, in view of the same, I find no reason to differ from the Appellate Court. There is no strong ground made out to interfere into the order of acquittal. For all those reasons, I find that absolutely, there is no merit in this appeal. Accordingly, appeal fails and liable to be dismissed.

15.In the result, this criminal appeal stands **dismissed,** confirming the Judgment of the learned IV Additional District and Sessions Judge, Madurai, dated 22.12.2017 made in C.A.No.57 of 2014, reversing the judgment made in S.T.C.No.553 of 2012 by the learned Judicial Magistrate, Melur, Madurai District.

02.09.2024

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

1.The Judicial Magistrate No.V, Tiruchirappalli.

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

G.ILANGOVAN, J

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