BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.10.2024

DELIVERED ON : 19.11.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.337 of 2019

P.Rajendran ... Petitioner/Appellant/Sole Accused

Vs.

S.Ravichandran ... Respondent/Respondent/Complainant

Prayer: Criminal Appeal has been preferred under Section 374 Cr.P.C., to set aside the Judgment, made in C.A.No.32 of 2018 by the Additional District and Sessions Court, Palani, dated 27.02.2019, reversing the Judgment of acquittal made in C.C.No.29 of 2016 by the Judicial Magistrate (Fast Track Court), Palani, dated 19.03.2018.

For Appellant : Mr.R.Gowri Shankar

For Respondent : Mr.D.Venkatesh

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the Judgment, made in C.A.No.32 of 2018 by the Additional District and Sessions Court, Palani, dated 27.02.2019, reversing the Judgment of acquittal made in C.C.No.29 of 2016 by the Judicial Magistrate (Fast Track

Court), Palani, dated 19.03.2018.

2.The facts in brief:

The accused and the complainant are friends from the child hood. The accused in the course of time, to meet out his expenses for his son's education, in abroad, borrowed a sum of Rs.50,00,000/- on 16.08.2015 and issued a cheque dated 28.10.2015 drawn on IDBI Bank, Palani Nagar. When it was presented for payment on 28.10.2015 through the complainant's Banker, returned with endorsement to contact the drawer, on 29.10.2015. That was intimated to the accused, he promised to honour the same and requested him to represent the same on 20.11.2015. Again it was represented, but, returned with the same endorsement. So after completing the statutory formalities, he filed the private complaint.

3.Before the trial Court, on the side of the complainant he himself was examined as PW1 and 14 documents were marked. On the side of the accused two witnesses were examined as RW1 and RW2 and one document was marked.

4.The trial court on appreciation of evidence let in, recorded finding that the complainant has not established the guilt of accused beyond all reasonable doubt and accordingly acquitted. Against which, the complainant filed C.A.No.32 of 2018 before the Additional District and Sessions Judge, Palani. It reversed the finding and recorded the finding of guilt and imposed simple imprisonment of 6 months under Section 138 of the Negotiable Instruments Act, apart from Rs.50,00,000/- as compensation to be payable within two months, in default one month simple imprisonment. Against which, this appeal is preferred by the accused.

5.It is a Judgment of reversal. We will go to the evidence available on record and the findings recorded by the trial Court. Before the trial Court, the accused raised a plea that both he and his wife were profitable employee and there is no necessity for them to borrow such a huge amount. He would further submitted before the trial Court that some of his signed cheques were found missing. The accused intimated the same to the banker, which was proved through RW2. He admitted the signature in the disputed cheque. Believing the above said evidence on the side of the accused, it recorded a finding that the complainant has not established the payment of huge amount with any documentary evidence and source to lend the money was also not established. On that score, the trial Court recorded the finding in favour of the accused.

6.Per contra, the appellate Court reversed the finding on the ground that the accused has admitted the signature in the cheque. So naturally the presumption under Section 139 of the Negotiable Instruments Act come into operation. The accused has not rebutted the presumption. Capacity of the complainant to lend such a huge amount was also established.

7.Now, in view of the above said diverged findings, let us go to the evidence available on record. The amount involved is huge, not in thousands, but, Rs.50,00,000/-. The necessity of borrowing such a huge amount by the accused, according to the complainant, is to meet out the educational expenses of his son, in abroad. When huge amount is lend, naturally, an ordinary prudent man will make enquiry as to the necessity of borrowal of such a huge amount. The evidence of PW1 on that aspect inspire no confidence at all. For most of the question with regard to the necessity, he stated that he does not know. The relevant portion in the cross examination can be extracted hereunder.

> "எதிரியின் மகன் என்ன படிக்கின்றார் என்றால் அது பற்றி எனக்கு தெரியாது. ......
>
> எதிரிக்கு எத்தனை குழந்தைகள் எனக் கேட்டால் 2 குழந்தைகள் அவருக்கு உண்டு. எதிரியின் இன்னொரு மகன் என்ன

வேலை பார்த்து வருகிறார் எனக் கேட்டால் அது பற்றி எனக்கு தெரியாது."

8.Further even with reference to the particulars of the accused's profession, he stated that he knows nothing. So this manner of evidence created doubt in the minds of the trial Court. As mentioned above, when lending such a huge amount, a minimum enquiry would have been made by the complainant with regard to the necessity. So this is the first aspect.

9.The second aspect is the capacity. He says that some four days prior to 16.08.2015, the accused requested money. Rs.25,00,000/- was kept by him in cash. That was his savings. He borrowed Rs.15,00,000/- from his brother-in-law, who named Rajendran and Rs.10,00,000/- from his father-in-law. The accused promised to pay 24% interest. The principal amount will be repaid within a year. He was paying the interest regularly for about two months. Thereafter, defaulted. After that he demanded back the money. At the time of borrowing itself, he issued a post dated cheque dating it as 28.10.2015. This also creates doubt with regard to the very transaction itself. When the complainant says that the money was borrowed on interest and for about two months, he was paying the interest at the rate of 24% and the payment of money was promised within a year, then, how the cheque dated 28.10.2015, was obtained is not clear. Similarly, the interest is also not calculated. Borrowing of money from his brother-in-law and from his father-in-law to lend such a huge amount without any documentary evidence, also creates doubt. So, this was rightly appreciated by the trial Court. As mentioned above, no ordinary prudent man will lend such a huge amount without any supporting documents, evidencing the transaction.

10.To show that along with the accused his friend also present at the time of transaction, he was not able to give particulars. No steps were taken by him to examine the friend of the accused as a witness. Reading of the evidence of the complainant does not inspire confidence at all, as negatived above. So when the capacity of the complainant and transaction itself is doubted, then it is the duty of the complainant to establish the transaction to the satisfaction of the Court. Except himself, no other evidence was available.

11.He has produced a document to show his capacity as Ex.P7 to Ex.P14. Even though from these documents, it can be seen that the complainant was having sufficient properties and cash amount in his Bank account, but on the particular date of transaction, as mentioned above, he was in possession of such a huge amount, is not established.

12.From the evidence of RW1 and Ex.R1, it stands established that the accused gave a petition to RW2, setting out the missing of his signed cheques with request to not honour the cheques, which went missing. So this *prima facie* indicates that something is fishy in the transaction alleged by the complainant.

13.In the light of the above said, the learned counsel for the respondent namely the complainant would submit that the capacity of the complainant to lend the money was a plea taken belatedly. There is no document to show that stoppage of payment order was given by the accused to RW2.

14.But from the evidence of RW2, the above said fact is established. As mentioned above, the transaction itself is shrouded in mystery. The trial Court correctly appreciated the evidence. But the appellate Court in cryptic manner reversed the finding simply on the ground that the accused has admitted his signature in the disputed cheque. The appellate Court has not recorded proper finding for reversing the judgment of acquittal. Reading of the judgment of the trial court does not indicate that it suffers from any perversity or illegality. As stated above it correctly appreciated the facts. The appellate Court ought not to have interfered with the well reasoned order for the reasons stated above.

15.In the result, the judgment of the appellate Court convicting the accused is hereby set aside. The judgment of acquittal passed by the trial Court is hereby confirmed and restored. Accordingly, this appeal stands allowed.

19.11.2024

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

1.The Additional District and Sessions Judge, Palani.

2.The Judicial Magistrate (Fast Track Court), Palani.

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

G.ILANGOVAN, J

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