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Crl.A(MD)No.520 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/11/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.520 of 2019

Dhandapani : Appellant/Appellant/
Sole Accused

Vs.

Gnanapalam : Respondent/Respondent/
Complainant

Prayer: This Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to set aside the judgment made in CA No.76 of 2017 by the Additional District and Sessions Court, Palani, dated 26/09/2018 reversing the judgment of acquittal made in CC No.61 of 2017 by the Judicial Magistrate (Fast Track Court), Palani, dated 28/06/2017.

For Appellant : Mr.D.Venkatesh

For Respondent : Mr.M.Ponniah

J U D G M E N T

This Criminal Appeal is filed against the judgement made in CA No.76 of 2017 by the Additional District and Sessions Court, Palani, dated 26/09/2018 reversing the judgment of acquittal made in CC No.61 of 2014 by the Judicial Magistrate (Fast Track Court), Palani, dated 28/06/2017.



2.The facts in brief:-

The accused and the complainant are friends. The accused to discharge his family debts received a sum of Rs.2,00,000/- on 25/05/2013. On 06/06/2014 towards discharge of the same, he issued the present cheque. It was presented for payment on the very same day. But came to be returned due to insufficient fund on 12/06/2014. After completing the statutory formalities, he filed the private complaint before the trial court under Section 138 of Negotiable Instruments Act.

3.The trial Court has taken cognizance for the offence under Section 138 of Negotiable Instruments Act and issued summons and on summons, the accused appeared before the trial Court. The substance of the allegation was put to the accused. He denied.

4.The complainant examined himself as PW1 and marked Exs.P1 to P10. On the side of the accused, 3 witnesses were examined and 2 documents marked.

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



6.At the conclusion of the trial process, the trial court, by judgment, dated 28/06/2017 acquitted the accused, finding that the complainant did not prove the case beyond all reasonable doubt.

7.Against the judgment of acquittal, the complainant preferred appeal before the first appellate court namely Additional District and Sessions Court, Palani in CA No.76of 2017. But the first appellate court reversed the finding of the trial court, convicted the accused and sentenced to undergo 6 months simple imprisonment and directing him to pay the cheque amount of Rs.2,00,000/- within a period of two months, in default to undergo 1 month simple imprisonment.

8.Against which, this criminal appeal is preferred by the accused as appellant.

9.Heard both sides.

10.It is a case of reversal judgment.

11.We will go to the evidence on record and the findings of the trial court.



12.The accused has not denied the signature in the disputed cheque, but he took up a plea that there was no transaction between himself and the complainant. The disputed cheque was issued in blank as a security for the transaction took place between the accused and one Perumal. So, when the accused has not denied and disputed the cheque and admitted that it was issued as a security over the transaction, it can be construed as valid consideration. So, automatically presumption under section 139 of the Negotiable Instruments Act came into operation. It is the duty of the accused to rebut the presumption.

13.Now we will see whether any rebuttable evidence is available apart from the above said facts pleaded by the accused.

14.A plea of alibi was taken by the accused stating that on the date of the alleged transaction between himself and the complainant, as stated by the complainant, he was on duty in the ERL Transport company.

15.RW3 was examined on the side of the accused to prove the alibi plea. He has stated in his evidence that he is working as Manager in ERL Transport Company and the accused is working as conductor for 3 years. He produced the invoices under Ex.R1 showing that the accused was on



duty between 25/05/2014 and 27/05/2014. On 25/05/2014, he might have been present in the office during noon time.

The attendance duty invoice was marked as Ex.R2. From this document, according to the accused, it stands established that there is no possibility for him to have been obtained money from the complainant on 25/05/2014 as pleaded by the complainant.

16. In this context, now we will go to the evidence of PW1. He says that on 25/05/2014, the accused approached him and obtained loan amount. But he is not very particular about the time. He has simply stated that on 25/04/2014, the accused received the amount. So, when a *prima facie* plea has been taken by the accused in the form of oral evidence of RW3 supported by the documentary evidence, it is the duty of the complainant to establish and prove that the transaction really took place as mentioned in his evidence. Absolutely, except his oral evidence, no other evidence in the form of documentary or oral evidence is available.

17. Exs.R1 and R2 cannot be discarded as fabricated documents for the purpose of supporting the case of the accused. Those documents would have been prepared in the course and during the discharge of official duty, which is authenticated by RW3. So absolutely, I find no reason to discard the oral evidence of RW3 and Ex.R1 and R2.



18.As mentioned above, against those concrete evidence, the complainant has not let in any evidence to the satisfaction of the court. The trial court has correctly appreciated the evidence let in and recorded a finding of acquittal. But against the findings recorded by the trial court, the first appellate court reversed the findings of the trial court and recorded a finding of guilt on the ground that plea of alibi was not properly established by the accused; no stop payment was requested in time and finding that there is contradiction between the evidence of RW2 and the evidence on record, it recorded a finding of guilt.

19.But from the discussion made above, I am of the considered view that the trial court has taken a probable view and the first appellate court has not addressed the points upon which findings were recorded in a proper manner. Without proper appreciation of evidence, the first appellate court has recorded a finding of guilt.

20.The learned counsel appearing for the respondent namely the complainant has relied upon number of judgments. Among the cases cited by the respondent, the case in **Rangappa Vs. Sri Mohan (2010(4) Supreme 169** is cited frequently. This judgment is the authority on the



principle of law, which shows that presumption under section 139 of the Negotiable Instruments Act will arise once the signature is admitted by the drawer of the cheque.

But it is a rebuttable presumption, which can be rebutted either by direct or circumstantial evidence. Exactly on this proposition of law only, the trial court recorded a finding of acquittal by taking the probable defence, which also as mentioned above stands to reason. None of the judgments cited by the respondent are supporting his case.

21.In this context, the learned counsel appearing for the respondent/complainant would submit that the evidence of RW3 is not believable since before attending the duty, the accused would have approached the complainant and obtained the loan amount. The evidence of RW2 is also not believable. He contradicted himself with the earlier version. But this argument advanced at the time of argument is not supported by the evidence.

22.As mentioned above, the complainant was not very particular about the time, by which the accused borrowed the amount, he has never stated the date. So, the contention on the part of the appellant that the duty time of the accused, even as per the invoice might have 11.30 or 12.00 noon. Before that time, there is possibility for him to have obtained the loan amount.



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23. But the criminal case cannot be decided on the basis of the probability. It must be proved beyond reasonable doubt. When the accused has rebutted the presumption successfully, as mentioned above, the complainant failed in his duty to prove the transaction.

24. So, I find no perversity or irregularity or illegality in the finding of the trial court.

25. In the result, this criminal appeal is **allowed**, setting aside the judgment of conviction and sentence passed by the first appellate court and the judgment of acquittal passed by the trial court is restored.

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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.

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