BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	17/10/2024
Date of Pronounced	11/11/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.152 of 2018

Dinesh : Appellant/Respondent/ Complainant

Vs.

N.P.Narayanan Nadar : Respondent/Appellant/ Accused

Prayer: This Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to call for the records in the order of acquittal passed by the 3rd Additional District and Sessions Court, Tirunelveli, in CA No.38 of 2016, dated 13/02/2018, reversing the order passed in STC No.13 of 2006 on the file of the Special Judicial Magistrate and Additional District Munsif Court, Valliyur, dated 25/04/2016 and set aside the same.

For Appellant : Mr.C.Susikumar

For Respondent : Mr.S.Subbiah Senior Counsel for Mrs.P.Jessi Jeeva Priya

J U D G M E N T

This Criminal Appeal is filed against the judgment passed by the 3rd Additional District and Sessions Court, Tirunelveli, in CA No.38 of 2016, dated 13/02/2018, reversing the order, dated 25/04/2016 passed in STC No.13 of 2006 by the Special Judicial Magistrate and Additional District Munsif Court, Valliyur.

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

The complainant and accused are friends. During the course of time, the accused borrowed a sum of Rs.3,00,000/- on 26/07/2005 for settling the urgent needs. He issued a post-dated cheque drawn on State Bank of India, Kottar branch bearing No.419912, dated 26/09/2005. It was presented for payment on 28/09/2005 through his Banker namely South Indian Bank Limited, Nagercoil branch. It came dishonoured on 28/09/2005 due to insufficient funds. After complying the statutory formalities, he filed a private complaint before the trial court for punishing the accused for the offence committed 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 accused appeared before the trial Court. The trial court questioned the accused by stating the substance of the complaint, he denied the accusation.

4.Before the trial Court, on the side of the complainant, one witness was examined and marked 5 documents. On the side of the accused, one witness was examined and marked 12 documents.

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 recorded a finding that the guilt of the accused was proved beyond all reasonable doubt, convicted the accused and sentenced him to undergo 3 months SI and directed to pay the compensation amount of Rs.3,00,000/- within 30 days in default to undergo SI for 3 months.

7.Against which, the accused preferred appeal in CA No.38 of 2016 before the III Additional District and Sessions Judge, Tirunelveli. The first appellate court reversed the finding of the trial court and acquitted the accused, by setting aside the judgment of conviction and sentence.

8.Against which, this criminal appeal is preferred by the complainant.

9.Heard both sides.

10.The learned counsel appearing for the complainant namely the appellant herein would submit that the accused admitted the signature in the disputed cheque, so automatically section 139 of the Negotiable Instruments Act came into operation and that was rightly taken by the trial court, but not the first appellate court. The capacity of the complainant was also properly established, since he was running a stone crushing Unit, which was not disputed by the accused during the course of the trial.

11.Apart from that, it is submitted that PW1 has given evidence with regard to the source of money stating that he was having money in cash; There is no evidence on record to show that the accused was having dealing with a Finance Company; The complainant has not raised any loan to lend money to the accused; No complaint was given by the accused regarding the missing of the cheque; The complainant's father is actually one of partners in the Finance Company and not the complainant. So, according to him, the judgment of reversal passed by the first appellate curt required interference, because glaring inconsistent finding has been recorded by the appellate court.

12.Per contra, the learned Senior Counsel appearing for the respondent would submit that the accused handed over five cheques to a Finance Company when he was having dealings. One of the cheques has been misused. The complainant's father is one of the partners of the said Company in which the accused having dealings. Another complaint filed by the complainant in STC No.290 of 2006 was dismissed on the very same ground. The defence pleaded by the accused was not taken into account by the trial court, so, it requires interference. It was correctly observed by the first appellate court. Apart from that, it is further submitted that the capacity of the complainant to lend such a huge amount was not established. Exs.R9 to R11 produced by the accused shows that the complainant's father is one of the partners in the Finance Company. So, according to him, the appellate court rightly appreciated the evidence on record and for valid reasons it set aside the conviction and sentence. So, no interference is called for.

13.In view of the reversal finding by the first appellate court, we will go to the evidence available on record.

14.As stated above, it is a simple case of the complainant that the accused being the friend borrowed

Rs.3,00,000/- on the date mentioned above to meet out his urgent requirement. The accused did not dispute the signature in the cheque. So, automatically presumption under section 139 of the Negotiable Instrument Act came into operation. It is for the accused to rebut the presumption, either by direct or circumstantial evidence..

15.Now we will straightaway go to the defence taken by the accused.

16.In 1998, the accused approached the Ganga Finance, Nagercoil for availing loan for deepening his well. At that time, as per the demand made by the officials, he handed over five blank signed unfilled cheques in favour of the Finance Company, apart from the other documents. After receiving the statutory notice from the complainant, he sent a reply notice setting out the facts marking the copy to the Ganga Finance. After discharge of the loan, he did not demand back the documents.

17.So, in the light of the above said, now we will go to the findings of the trial court.

18.The trial court has recorded a finding that the defence of the accused was not probabilised, per contra, by virtue of section 139 of the Negotiable Instruments Act, presumption is available, which is not satisfactorily dislodged by the accused. Contra to this, it is the finding of the first appellate court that from the evidence of PW1, doubt was reasonably raised by the accused to the effect that the complainant's father is running a Finance Company called 'Ganga Finance', wherein the accused was indebted. Apart from that, the transaction itself was doubted because of the fact that the complainant has stated that the accused is his distant relative. Both are lying with regard to the relationship. Apart from that, the transaction itself was doubted, since the particulars were not available in the complaint.

19.In this context, the learned counsel appearing for the appellant would rely upon the judgment of the Hon'ble Supreme Court in ***APS FOREX SERVICES PVT. LIMITED Vs. SHAKTI INTERNATIONAL FASHION LINKERS & OTHERS in Criminal Appeal No.271 of 2020, dated 14/02/2020.***

20.On the other hand, it is the contention of the learned Senior Counsel appearing for the respondent that as per the judgment of the Hon'ble Supreme Court in ***DATTATRAYA Vs. SHARANAPPA (2024)8 SCC 573,*** mere admission of the signature will not be sufficient. Foundational facts must be established.

21.Now we will go to the evidence of the complainant. He has stated that the accused approached him one week prior to the payment of loan. At that time, he brought the cheque, filled up by him; no other document was obtained evidencing the transaction. He denies the knowledge about the Ganga Finance, wherein his father is a partner. So, reading of the evidence of PW1 does not inspire any confidence at all. Even he went to the extent of stating that he has no knowledge about the partners in the Ganga Finance. Even he is not able to say the correct date, on which the amount was borrowed. He has simply stated that one week prior to the transaction, he requested money, which is highly unbelievable that huge amount of Rs.3,00,000/- was given without getting any document. In the chief examination, he has stated that on 04/10/2004, the accused demanded Rs.3,00,000/-. The above said cheque was issued on the very same day, dating the same on 04/04/2005. So, this itself creates doubt. More-over, all the particulars in the cheque were filled up in typewritten form. This is also not properly explained by the complainant.

22.In a criminal case, the guilt of the accused must be proved beyond reasonable doubt. When reasonable doubt is created, then the accused is entitled to that benefit. That was rightly decided by the first appellate court. There is no perversity in the findings of the first appellate court. I find no reason to entertain this appeal and the same is liable to be dismissed.

23.In the result, this criminal appeal is **dismissed**, confirming the judgment of acquittal passed by the first appellate court.

11**/11/2024**

Index : Yes/No
Internet : Yes/No
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To,

1.The Special Judicial Magistrate and
Additional District Munsif,
Valliyur,
Tirunelveli District.

2.The II Additional District and Sessions Judge,
Tirunelveli.

G.ILANGOVAN,J

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