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Crl.A(MD)No.32 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18/09/2024

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THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)Nos.32 of 2018

Thambiraj : Appellant/Respondent/
Complainant
Vs.

Wilson @ Wilson Arokiyadhas : Respondent/Appellant/
Accused

Prayer: This Criminal Appeal is filed under Section 378(1) r/w 401 of Criminal Procedure Code against the judgment dated 31/01/2017 made in Crl.A No.96 of 2015 on the file of the 4th Additional Sessions Judge, Tirunelveli and reversing the judgment, dated 23/07/2015 made in CC No. 455 of 2013 on the file of the Judicial Magistrate Court, Valliyoor.

For Appellants : Mr.V.Agusamy
for Mr.S.R.Anbarasu

For Respondent : Mr.K.Sivabalan
for Mr.G.Aravinthan

J U D G M E N T

This Criminal Appeal is filed against the against the judgment, dated 31/01/2017 passed in Crl.A No.96 of 2015 by the 4th Additional Sessions Judge, Tirunelveli, reversing the judgment, dated 23/07/2015 passed in CC No. 455 of 2013 by the Judicial Magistrate Court, Valliyoor.



2. The facts in brief:-

The complainant and the accused were jointly doing Real Estate business. In the course of the above said business, a sum of Rs.1,50,000/- was due to be paid by the accused to the complainant in respect of sale of the property situated in Survey No.1398/2B in Perungudi Village. When that money was demanded back, a panchayat was held on 17/02/2010 in the presence of Ex-Minister Nainar Nagendran and others. Because of that, the accused issued a cheque on 01/08/2010 bearing No.908925 for Rs.1,50,000/-. It was presented for payment on 16/08/2010, but it was returned as stop payment issued by the drawer. After completing the statutory formalities, he filed the private complaint under Section 138 of Negotiable Instruments Act.

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

4.The appellant examined himself as PW1 and marked Exs.P1 to P9. On the side of the accused, 3 witnesses were examined and 3 documents were marked.



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 evidences. The accused denied the evidences.

6. At the conclusion of the trial process, the trial court convicted the accused under section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year.

7. Against the judgment of conviction and sentence, appeal was preferred before the appellate court in CA No.96 of 2015 before the 4th Additional Sub Judge, Tirunelveli. The appellate court reversed the finding of conviction and sentence passed by the trial court and acquitted the accused.

8. Aggrieved over the same, the complainant is before this court by way of filing this criminal appeal.

9. Heard both sides.

10. Since it is a judgment of reversal, we will straightaway go to the judgment of the first appellate court.



11.By relying upon the judgment of the Hon'ble Supreme Court in **Rangappa Vs. Sri Mohan [2010 SAR (Criminal) 568]**, the appellate court has stated that even though the signature is admitted by the accused person that he is facing the charge under section 138 of the Negotiable Instruments Act, he can probablise his defence by bringing on record direct or indirect evidence. If the accused is able to rebut the presumption, which is available in favour of the complaint or cheque under section 139 of the Negotiable Instruments Act, the burden will be shifted to the complainant to prove the transaction etc.

12.Now, as stated in the complaint, It is the case of the complainant that both were doing Real Estate business and in the course of the business, Rs.1,50,000/- was due to be payable by the accused in respect of the sale of certain properties. Over the due, a panchayat was held in the presence of an Ex-Minister. On that occasion only, the present cheque was issued. That fact must be established by the complainant to show that at the free will of the accused, the above said document was executed by him. Now the very transaction in respect of the sale of the property was doubted by the appellate court.



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13. According to the accused, power of attorney was obtained from the owner of the land and sold the property to the third party. To show the same, he has produced Ex.D1, the receipt issued by Annameriyal in respect of the sale of the property in survey No.1398/2B. Ex.D2 is the joint power of attorney executed by the owner Annameriyal in favour of the accused. Ex.D3 is the copy of the sale deed executed by the accused in favour of one Muthumani on the basis of Ex.D2. Nowhere in all those documents namely Exs.D1 to D3 the name of the complainant is mentioned.

14. If really, it is the joint venture made by the complainant and the accused, all those things would have been mentioned in the above documents. Except the oral evidence of the complainant that it is a joint venture, no other corroborative evidence is available. So, the very transaction itself was under doubt.

15. Another circumstance is that according to the accused, the cheque was given only to one Stephan who signed as witness in Exs.D2 and D3. For what purpose, the above said cheque was given to Stephan is the next point. The accused would say in his evidence that when he sold the property to one Muthmani, balance sale consideration remains to be paid by the purchaser. Stephan insisted payment of commission towards that he gave two cheques to



him. Out of two cheques, one was returned to him and another has been misused. So, the issued notice on 27/07/2010 to Stephan and the complainant. In spite of the panchayat took place in the presence of the Ex-Minister, it is denied by him. He has also stated that the above said cheque was given to Stephan voluntarily. There was no threat or coercion. Even his evidence with regard to the above said transaction with Stephan is not supported by any evidence. DW2 and DW3 who are allegedly present during the course of panchayat also denying that the cheque was issued in favour of the complainant. On that date, he has discharged of their liability. Even if we ignore the evidence of DW2 and DW3, circumstances are standing against the complainant.

16. When doubt is created on the very nature of the transaction itself in the form of Exs.D1 to D3, it is the duty of the complainant to prove that really the panchayat took place on that date, the accused issued a cheque towards discharge of the liability.

17. Now, in this context, we will go to the evidence of PW1. According to him, the total sale consideration amount is Rs.2,50,000/-. Only Rs.1,00,000/- was paid by Muthumani in cash. The remaining amount was paid by way of cheque. He denied that Rs.2,50,000/- is the commission



amount namely the brokerage charges. But it is a share in the profit. But during the course of the cross examination, so many particulars have been sought by the accused in the form of cross examination. In the presence of Ex-Minister, two transactions took place in the panchayat. One in respect of money to be paid by Muthumani to the accused, apart from the amount due to be paid to the complainant. It was admitted by the accused that in respect of the amount to be paid by the Muthumani, it was fixed at Rs.1,50,000/- and the balance amount must be paid by the accused. Two cheques were issued by the accused as security to be payable by Stephan till the payment made by Muthumani and steps have been taken by the accused during the course of the evidence is also not understandable. Contradictory stand has been taken not only by the accused, but also the complainant.

18.It is highly unbelievable that brokerage commission will alone come around Rs.1,50,000/- towards share to the complainant. So, the transaction which is pleaded by the complainant itself is highly unbelievable.

19.Now the learned counsel appearing for the appellant would submit that having admitted the signature, the appellant court has not taken into account the other circumstance namely the plea of threat alleged to have made



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by the complainant is not established. The trial court has rejected the version of the accused for proper reasons. No notice of demand was required to be given and no complaint was also given by the accused against any one regarding the missing or theft of the cheque. It was not actually the plea of the accused. But, as mentioned above, the transaction pleaded not only by the complainant, but also the accused are highly unbelievable.

20. In a case of 138 of the Negotiable Instruments Act, apart from the issue of cheque, the basic transaction must be established. Here, the basic transaction is not established by the appellant. So, I find absolutely no reason to interfere into the order of acquittal passed by the appellate court.

21. In the result, this criminal appeal is **dismissed.**

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

- 1.The IV Additional District and Sessions Judge,
Tirunelveli.
- 2.The Judicial Magistrate,
Valliyoor.



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G. ILANGO VAN, J

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