BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **14.10.2024**

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGOVAN**

Crl.A(MD)No.661 of 2023

Indira ... Appellant / Complainant

Vs.

Regu ... Respondent / Accused

Prayer : This Appeal is filed under Section 378 of Cr.P.C., to call for the records and set aside the judgment and acquittal order passed by the Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, in S.T.C.No.757 of 2019 dated 22.06.2023 and convict the accused for the offence under Section 138 of Negotiable Instruments Act.

For appellant : Mr.C.Bharathi

For Respondent : Mr.M.R.Sreenivasan

JUDGMENT

This Criminal appeal is filed to call for the records and set aside the judgment and acquittal order passed by the Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, in S.T.C.No.757 of 2019 dated

22.06.2023 and convict the accused for the offence under Section 138 of Negotiable Instruments Act.

2. The case of the prosecution namely the appellant herein is that she and the respondent herein were friends. In the month of September first week, the accused approached her for financial assistance of Rs.5 Lakhs. The respondent also promised to return the money within a month. On the basis of the request made by the respondent, the complainant collected money from her brother and relatives. On 17.10.2018, the money was given to the accused. On the date itself, the accused issued two cheques bearing Nos. 448886 for a sum of Rs.2,00,000/- dated 17.11.2018 and 448885 for a sum of Rs.3,00,000/- dated 07.02.2019 and requested him to present the cheque for payment at his convenience. The cheque bearing No.448886 was presented for payment and came to be returned on 10.01.2019 as signature does not tally. When that was intimated to the accused, he promised the complainant to present the cheque for honour. Two cheques were presented for payment before the Indian Bank, Marthandam. Both returned dishonoured on 11.02.2019 and 12.02.2019 respectively. After completing the statutory formalities, the complaint was filed under Section 200 of Cr.P.C., to punish the accused for the offence under Section 138 of Negotiable Instruments Act.

3. At the conclusion of the trial process, the trial Court found that the complainant has not established guilt of the accused beyond all reasonable doubts and so it rendered a judgment of acquittal. Against which this appeal has been preferred by the complainant.

4. Before the trial Court on the side of the complainant, one witness was examined and 20 documents were marked. On the side of the accused three witnesses were examined and one document was marked.

5. Learned counsel for the appellant would submit that the capacity of the appellant to lend money was doubted by the trial Court. But that was not the issue raised by the accused at the initial stage. That plea was taken only belatedly. When the accused has not disputed the signature in the disputed cheque, then presumption under Section 139 of NI Act will come into play that was not properly appreciated by the trial Court.

6. Per contra, learned counsel for the respondent would submit that the issue of the cheques on different dates itself is unbelievable. The first cheque No.448885 was dated 07.02.2019 and the second cheque is 448886

which was dated 17.11.2018. The first cheque is subsequent to the date mentioned in the second cheque, which is also referred to the reply notice issued by him. False address is mentioned by the appellant in the complaint. That was the reason for the trial Court to record a finding of fact against the appellants which requires no interference.

7. Since the judgment of acquittal was passed by the trial Court, now we will go to the evidence now available on records and finding thereon. The complainant was assisting the accused in his shop frequently. During that course of time, she stolen the cheques found in his shop and foisted the case. The appellant has no capacity to lend such a huge amount. She is a woman of no means. So she is getting Rs.1000/- from the Government under he Special Scheme. The accused has also denied the signature in the cheques. That was the defence taken by the accused before the trial Court. To probablise his defence, he has examined R.W.2, the Manager from South Indian Bank, wherein he stated that the signature found in Ex.P1 and Ex.P2 does not tally with the specimen signature found in that bank. But the cheques were returned dishonoured due to insufficient funds. Now with regard to the signature as mentioned above, it is a specific case of the respondent that it is not genuine. The first return dated 10.01.2019 was made

stating that signature does not tally. Later that was presented for payment again which came to be returned due to insufficient funds. To prove that the accused really signed in the cheque, no other corroborative evidence was let in by the complainant. Except herself no other independent witness was examined even to show the signature that it was signed only by the accused and was handed over to the complainant. So this is the first defect available in the case of the appellant.

8. Now coming to the consideration as mentioned above, not only the capacity of the complainant to lend such huge amount was disputed but even the reason for borrowing is also disputed. To show that the complainant is not having means to pay such huge amount, the accused has examined R.W.3, an independent witness where he stated that the complainant was assisting the accused in his shop. He went along with the accused to enquire the complainant about the legal notice. At that time they were abused by the complainant. Contra to his evidence, no other independent witness was examined on the side of the complainant to prove the transaction.

9. Now coming to the evidence of the complainant, she has not mentioned the place of the transaction. But during the course of cross

examination, she has stated that in Pallanvilai, the transaction took place. With regard to the capacity, she has stated that she is doing the religious service and getting Rs.10,000/- to Rs.15,000/- per month by way of the charges. Out of the said amount she used to spend Rs.8,000/-. Apart from the above said service, no other income is available and she has also admitted that she is getting Rs.1,000/- pension from the Government under a special scheme.

10. Reading of the evidence of the complainant does not inspire any confidence at all with regard to the capacity to lend such huge amount. Moreover, for lending money to the accused, she has stated that she borrowed money from her relatives and brother. What is the necessity for such help is also not stated by her. No one will borrow money from brother or relative to lend money to some other third person. So this itself shows that the complainant was not having the capacity to lend such a huge amount to the accused. So when the foundational facts were not established by the complainant, to the satisfaction of the Court, I am of the considered view that no interference is called for, since the finding of fact recorded by the trial Court were rendered after appreciating the facts in a proper perspective.

11. On that account, this Criminal Appeal stands dismissed, by

confirming the judgment of acquittal passed by the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, in S.T.C.No.757 of 2019 dated 22.06.2023.

14.10.2024

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

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To

1. The Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

G.ILANGOVAN, J.

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