



Crl.A(MD)No.313 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.313 of 2016

R.Uma

... Appellant/ Respondent / Complainant

Vs.

A.Henry

... Respondent / Appellant / Accused

Prayer : This Appeal is filed under Section 378 of Cr.P.C., to call for the records pertaining to the judgment passed by the learned III Additional District cum Sessions Court, Thanjavur in Crl.A.No.15 /2012 dated 10.12.2014 acquitting the respondent / Appellant / Accused for the offences under Section 138 of Negotiable Instruments Act and set aside the same.

For appellant : Mr.M.Jegadeesh Pandian

For Respondent : Mr.D.R.Murugesan



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J U D G M E N T

This Criminal Appeal is preferred against the order of acquittal passed by the learned III Additional District cum Sessions Court, Thanjavur in Crl.A.No.15 of 2012, reversing the judgment of conviction and sentence imposed upon the respondent by the learned District Munsif, Pattukottai, Thanjavur in C.C.No.83 of 2010.

2. The case of the complainant in brief is that the respondent herein namely the accused is well known to the complainant's husband. He received Rs.1 Lakh on various dates as loan amount from the complainant. The amount was borrowed on 12.06.2009. To discharge the amount, on the very same date of borrowal, he issued a cheque bearing No.0909387, drawn on State Bank of India, Thiruvudaimaruthur Branch. The cheque was handed over to the complainant, promising that it may be presented for encashment after five months. The cheque was presented for payment. By memo dated 13.11.2009, it was returned as insufficient fund, by the complainant banker. After completing the statutory formalities of sending notice, he filed the private complaint before the learned Judicial Magistrate, Pattukottai. It was taken cognizance in C.C.No.83 of 2010.



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3. Before the trial Court on the side of the complainant, two witnesses were examined, five documents were marked. On the side of the respondent / accused, one witness was examined and no document was marked. At the conclusion of the trial process, the trial Court found that the disputed cheque was issued towards the legally enforceable liability or debt the case may be. Since the cheque was dishonoured due to insufficient fund and the accused failed to meet out the demand inspite of statutory notice, he was found guilty under Section 138 of Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and fine of Rs.5000/-, failing which in default, three months simple imprisonment was ordered. Against which, an appeal was preferred by the accused before the appellate Court namely III Additional District and Sessions Judge, Thanjavur at Pattukottai and the III Additional District Judge, Pattukottai differed from the finding of fact recorded by the trial Court acquitted, the accused. Against which this appeal is preferred by the complainant.

4. Heard both sides.



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5. It is a case of reversal finding. Let us go to the evidence on record. The signature in the cheque is not disputed. What is disputed by the respondent is the consideration from the complainant. Since signature in the cheque is admitted automatically the presumption under Section 139 of NI Act comes to operation. So it is the duty of the respondent herein to probablise his defence. The defence that was taken by him before the trial Court is that he issued the cheque to one Kamban. That was misused by the complainant. To probablise the defence, he examined one Gurusamy before the trial Court. Gurusamy stated in his evidence that there was transaction between the respondent and Kamban. He compromised the issue but Kamban refused to receive Rs.15,000/- towards final settlement ; He did not receive the cheque issued by the accused. It is not clear on evidence whether at the time of borrowing money from Kamban, the accused issued the present cheque or not.

6. It was contended by the appellant before the trial Court that the transaction between the Kamban and respondent has no relevancy. That was accepted by the trial Court recorded a finding of guilt.



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7. Before the appellate Court, the respondent examined himself as a witness, after filing application under Section 391 of Cr.P.C. He stated in his evidence that he never knows the complainant, knows the complainant's husband only, never borrowed any money from the complainant. Further he states that he borrowed money from one Kamban and at that time as a security, he handed over the signed cheque ; The amount borrowed was Rs. 5,000/- he discharged the loan ; Kamban returned the promissory note but not the cheque. Later he came to know that the complainant is the sister-in-law of Kamban. Taking advantage of the relationship, a false case has been foisted. He admitted the signature, mentioning the dates and as well as the seal of the school ; that was the reply sent by him in response to the statutory notice issued by the complainant. As mentioned above there is no direct evidence with regard to the issuance of cheque by the accused in favour of Kamban. Similarly there is no direct evidence to show that the accused borrowed a sum of Rs.1 Lakh on 12.06.2009 from the complainant. In those circumstances as mentioned above whether the accused has probablised his defence, in this context, the judgment of the appellate Court requires consideration.



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8. The appellate Court is of the view that the accused belongs to Thiruneelakudi, whereas the complainant belongs to some other area which is 60 kms away. The complainant has also given a wrong residential particulars of the accused. The complainant stated that the accused is residing in Thiruvidadaimaruthur, Kailasapuram. Whereas, as mentioned above, his native village is Thiruneelakudi. That complainant knows the accused, she would not have mentioned different residential address.

9. Second ground is that according to the complainant, the date of borrowal is 12.06.2009. There is no necessity for issuing the cheque on the very same date itself. Except the cheque, no other document or evidence is available to show the borrowal. So these are the two circumstances which the appellate Court took into account. The complainant also committed a mistake during the course of evidence. The date of issuance of cheque is mentioned in the sworn statement but not in the evidence. In the absence of any corroborating evidence to show the borrowal, the appellate Court was of the view that the consideration itself is doubtful.



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10. Now the above said finding is called in question by this appeal.

Regarding the first issue of wrong mentioning of residential place of the accused, namely the respondent herein by the complainant, there is no proper explanation on the part of the appellant. When a huge money of Rs.1 Lakh was borrowed by the accused that too without any documentary proof, it is highly improbable that the complainant gave money to a person whose residence is not properly known to her. Without verification of proper residential address, none will lend money. So this itself shows that the consideration mentioned in the complaint is highly improbable. Regarding the date of issuance of cheque it may be wrong. In the complaint / statement she has mentioned that it was issued on the date of borrowal itself. It is an antedated cheque. It is also the case of the complainant that the respondent promised to honour the cheque after five months. There was no prior notice from the complainant to the respondent herein about the promise to honour the cheque. There was no evidence on record to show that in the meantime, demand was made by the complainant to honour the cheque.

11. In those circumstances, the doubt entertained by the appellate Court seems to be reasonable. The accused has rebutted the presumption by



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indirect or circumstantial evidence. Again now the burden shifts to the appellant herein. Eventhough the appellant states that at the time of borrowal, her husband was also present, he was not examined as a witness. So the consideration itself is doubtful.

12. In view of the above discussions, I am of the considered view that the finding of fact recorded by the appellate Court, reversing the finding of the fact by the trial Court requires no interference.

13. Accordingly, this Criminal Appeal is dismissed, confirming the order of the learned III Additional District cum Sessions Judge, Thanjavur in Crl.A.No.15 /2012 dated 10.12.2014, reversing the judgment made in C.C.No.83 of 2010 passed by the learned District Munsif, Pattukottai, Thanjavur District.

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NCC : Yes / No

Index : Yes/No

Internet : Yes/No

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To

1. The III Additional District cum Sessions Judge, Thanjavur.
2. The District Munsif, Pattukottai, Thanjavur District.



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