BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.09.2024**

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

Crl.A(MD)No.421 of 2018

G.Kannan ... Appellant/ Complainant

Vs.

T.Shanmuga Sundaram ... Respondent / Accused

Prayer : This Appeal is filed under Section 372 of Cr.P.C., to call for the records pertaining to the judgment in C.A.No.88 of 2016 on the file of the Additional District and Sessions Judge, Madurai, dated 16.02.2018 in C.C.No.263 of 2012 on 29.09.2016 on the file of the Learned Judicial Magistrate, Arupukottai, Viruthunagar District and set aside the same.

For appellant : Mr.T.Lajapathi Roy
Senior Counsel
for Lajapathi Roy Associates

For Respondent : Mr.M.Jothi Basu

JUDGMENT

This Criminal appeal is filed to call for the records pertaining to the judgment in C.A.No.88 of 2016 on the file of the Additional District and Sessions Judge, Madurai, dated 16.02.2018 in C.C.No.263 of 2012 on 29.09.2016 on the file of the Learned Judicial Magistrate, Arupukottai, Viruthunagar District and set aside the same.

2. The case of the prosecution in brief is that the accused borrowed a sum of Rs.2 Lakhs on 31.01.2012, promising to repay the same with interest. To discharge the loan amount, he issued a cheque dated 27.07.2012, drawn on Tamilnadu Mercantile Bank, Aruppukottai. It was presented for payment before the banker. It was returned as account closed. After completing the statutory formalities, he filed a private complaint before the trial Court. At the conclusion of the trial process, the trial Court found the accused guilty under Section 138 of Negotiable Instruments Act and convicted and sentenced him to undergo six month simple imprisonment and Rs.2 Lakhs was ordered as compensation. Against which, the accused preferred appeal before the Additional District and Sessions Judge, Virudhunagar in C.A.No.88 of 2016. The appellate Court by reversing the finding of the trial Court, allowed the appeal and set aside the judgment of

conviction and sentence. Against which this Criminal Appeal is preferred by the complainant.

3. Heard both sides.

4. It is a reversal judgment. Learned counsel for the appellant would submit that when there is a clear finding by the trial Court as to the guilt of the accused, the appellate Court without proper appreciation namely the respondent herein has not disputed the signature, then automatically the presumption under Section 139 of Negotiable Instruments Act, will come into operation; the accused has not probablize his defence before the appellate Court, so, according to him the judgment of the trial Court must be restored.

5. Per contra, learned counsel for the respondent would submit that he has not admitted his signature in the document. It was issued in blank and contents were filled up by the complainant. Even during the course of trial process, the appellant has admitted that the signature in the disputed document differs from that of the admitted signature of the accused. Apart from that it is also submitted that no document was produced by the appellant to show the transaction. No IT return form was produced, to show the

lending. So according to him, judgment of the appellate Court is properly legal which requires no interference.

6. Since it is a case of reversal judgment, we will to go to the judgment of the trial Court first. There is a finding by the trial Court that the accused has admitted his signature in the document. So when the signature is admitted naturally the presumption under Section 139 of Negotiable Instruments Act, will come into operation and the accused has to probabilise his defence. It was contended by the accused before the trial Court that he issued the cheque in favour of one Sivasankaran on the eve of mortgage. It was the specific case of the accused that on the date of mortgage namely 16.11.2011, the cheques were issued as security to Sivasankaran. But from the evidence of R.W.2, the trial Court recorded a finding that the cheque book was issued to the accused only on 05.01.2012. So his defence was not probablised.

7. Regarding the capacity of the complainant to pay the money, it was contended that the complainant was doing the real estate business and apart from that he has filed several complaint based upon pro-notes and cheques. So he had the means to lend the money. On that account, they

recorded the finding of guilt. Now the appellate Court states that the transaction itself is doubtful because the complainant shows that on 27.07.2012 the accused issued the cheque. From that evidence, the appellate Court drew the inference that it was filled up in entirety by the accused. But the signature and as well as the contents differed. That was also admitted by the complainant himself. According to the appellate Court, this amount to material alteration under Section 87 of the Act. Against which, no cause of action will arise.

8. The second point was that except the disputed cheque, no other document evidencing the transaction was produced by the complainant. According to the appellate Court, no prudent man will lend such a huge amount without evidencing the same by proper document. On that account, it doubted the very transaction itself. From the circumstances, the accused has rebutted the presumption but the complainant has not produced any evidence contra to the rebuttal circumstances.

9. So the question which arises for consideration is whether the judgment of reversal passed by the appellate Court is proper. First, as stated above, eventhough it is stated that both are friends, the contention on the part

of the complainant that he lend the money without any documents evidencing the lending which goes against ordinary prudent man conduct. That is supported in view of the fact that the contents and as well as signature of the accused does not tally which means that it appears not only signature of the accused and the contents were written by some other person.

10. Stopping a moment here as mentioned by the trial Court, the defence of the accused that the present subject cheque was issued along with two other cheques as a security in favour of one Sivasankaran, was not established because the cheque book was issued only subsequent to that alleged security transaction with Sivasankaran. But the other circumstances as noted above was taken into account by the appellate Court. Now we will go to the evidence of the complainant as to see whether it inspires any confidence with regard to the transaction.

11. A reading of the evidence shows that the said Sivasankaran is a money lender by profession. He is having the habit of filing several complaint based upon cheques against several persons and civil suits based upon pro-notes. Even in the statutory notice itself he has stated that the money was lend for interest. But other particulars are not available. No

document was produced evidencing the payment of interest. Every year, interest was calculated for the amount. The complainant would not have accepted the cheque for the principal amount. What happened to the interest is not known.

12. Now we will go to the evidence of the complainant. He says that upto July, 2012, interest was paid by the accused. But there is no documentary proof. When the interest was paid up to July, the possibility of issuance of cheque on 27.07.2012 for the principal amount does not arise at all. Reading of the evidence of the complainant does not inspire any confidence with regard to the very transaction itself. Apart from that an attempt was made by him to the effect that Sivasankaran referred by the accused has filed two such similar cases against the accused. So this itself probablise the case of the accused, eventhough the date of issue of the cheque as a security does not tally.

13. For the reasons stated above, I find absolutely nothing on record to differ from the view taken by the appellate Court. The appellate Court has taken a common sense view. This Court does not intend to interfere with the judgment of acquittal passed by the appellate Court.

14. Accordingly, this Criminal Appeal is dismissed, confirming the judgment made in C.A.No.88 of 2016 on the file of the Additional District and Sessions Judge, Madurai, dated 16.02.2018, setting aside the judgment of conviction and sentence passed in C.C.No.263 of 2012 on 29.09.2016 on the file of the Learned Judicial Magistrate, Arupukottai, Viruthunagar District. No costs.

27.09.2024

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

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To

1. The Additional District and Sessions Judge, Madurai.
2. The Judicial Magistrate, Arupukottai, Viruthunagar District.

G.ILANGOVAN,J.

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