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Crl.A.(MD).No.438 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.10.2024

DELIVERED ON : 27.11.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.438 of 2018

R.Neelaandan ... Appellant/Respondent/Complainant

Vs.

Sundaralingam ... Respondent/Appellant/Respondent

Prayer: Criminal Appeal has been preferred under Section 372 Cr.P.C., to call for the records and set aside the judgment in Crl.A.No.46 of 2016, dated 11.08.2017 on the file of the Additional District and Sessions Court, Thanjavur, at Pattukkottai reversing the Judgment in S.T.C.No.58 of 2014, dated 12.09.2016 on the file of the Judicial Magistrate, Pattukkottai.

For Appellant : Mr.R.Paranjothi

For Respondent : Mr.R.Anand for Mr.C.Suresh Kannan

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside the judgment in Crl.A.No.46 of 2016, dated 11.08.2017 on the file of the Additional District and Sessions Court, Thanjavur, at Pattukkottai reversing the Judgment in S.T.C.No.58 of 2014, dated 12.09.2016 on the file of the



Judicial Magistrate, Pattukkottai.

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2.The complainant filed a complaint with the following averments:

The accused borrowed a sum of Rs.1,25,000/- from the complainant on 01.08.2011, promising to return the same within a period of six months. But the accused failed to comply the promise. So he issued a cheque on 16.04.2012 towards the discharge of the liability. It was presented for payment on 21.05.2012 before the State Bank of India, Peravurani Branch. It came to be returned on 24.05.2012, due to insufficient fund. After completing the statutory formalities, he filed the complaint before the trial Court under Section 138 of the Negotiable Instruments Act.

3.On the side of the complainant before the trial Court he himself was examined as PW1 and four documents were marked. On the side of the respondent no witness was examined and no documents were marked.

4.At the conclusion of the trial process, the trial Court found the accused guilty under Section 138 of the Negotiable Instruments Act, and passed judgment convicting and sentenced him to undergo one year simple imprisonment and Rs.1,25,000/- was fixed as compensation under Section



257 (3) Cr.P.C., in default three months simple imprisonment.

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5. Against which, the accused preferred the appeal in Crl.A. (MD).No.46 of 2016, before III Additional District Judge, Pattukkottai. The appellate Court took contra view and finding, reversed the judgment of conviction and sentence and acquitted the accused. Against which, this appeal is preferred by the complainant.

6. Since it is a judgment of reversal, we will go to the finding recorded by the trial Court, before we go into the main aspect. The accused raises a plea that he never borrowed Rs.1,25,000/- from the complainant, but he borrowed only Rs.5,000/- for his medical expenses. At that time, the complainant obtained signed cheques as security. Since he could not pay the money, the complaint was filed. Since the accused admitted the signature in the cheque, a portion of the consideration is also admitted; he failed to rebut the presumption under Section 139 of the Negotiable Instruments Act available in favour of the complainant.

7. Now going to the appellate Court's reversal finding. It says that there is material alteration in the cheque; Regarding the issuance of the cheque, there is contradiction in the version of the complainant as to the



date and month; The second presentation was made on 25.01.2015; But the complainant is silent about the second presentation. There is no corroboration evidence to show the transaction.

8. Apart from that total amount involved in the cheque was also doubted. In the light of the above said diverged views now we will go to the arguments advanced by the parties. The learned counsel for the appellant would submit that no proper reply was given by the accused after receiving the statutory notice, even he failed to examine himself as witness; The accused is a Government Employee; It is unbelievable that he issued a cheque for a meagre amount of Rs.5,000/- as security; The previous loan transaction pleaded by the accused is not true.

9. Per contra, the learned counsel for the respondent would submit that against the judgment of acquittal passed by the appellate Court only revision will lie and not regular appeal; The complaint was not filed in time; So C.M.P was filed to condone the delay; Without disposing or condoning the delay the main case was taken cognizance by the trial Court, which is not legal; Statutory notice was not duly served upon the respondent. According to him, more particularly, when contradictory stand are taken by the complainant, judgment of reversal passed by the appellate Court



requires no interference.

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10.As stated above, the respondent did not deny and disputed the signature found in the cheque. But, actually he admits the same. But, at the same time, contradictory stand taken by the complainant as mentioned by the appellate Court with regard to the issue of the cheques. Absolutely, there is no explanation on the part of the appellant herein, either in the grounds or during the course of arguments. Who filled up the cheque is the point of doubt raised by the appellate Court. It is the genuine doubt, since the case of the respondent is that it was issued in Blank in favour of the complainant at the time of borrowing Rs.5,000/-. But filled up the same as Rs.1,25,000/- by the complainant is not authorised one; So it will amount to fill up of cheque in unauthorised manner; It is not the case of the complainant that he is holder in due course; This important aspect was not taken into account by the trial court.

11.With this major lacuna in the case of the complainant we will go to the judgment cited by the appellant. In the first judgment cited in the case of ***Jain P.Jose Vs. Santosh and another*** passed by the Honourable Supreme Court of India in ***Crl.A.No..... of 2022 arising out of SLP (Crl.) No(s).5241 of 2016***), a similar plea was taken by the accused, wherein, the



following observation requires reproduction here.

“17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite "Bir Singh v. Mukesh Kumar”, where this court held that:

“Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

12.The learned counsel for the appellant would submit that this being the settled preposition of law, the appellate Court has recorded a contra finding which is not legally sustainable.

13.Per contra, the learned counsel for the respondent would contend that as per the judgment of the Honourable supreme Court merely because the accused has admitted the signature in the disputed cheque no liability will arise unless foundational facts are established by the



complainant.

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14.The meaning of the arguments of the respondent is that apart from the disputed cheque, the complainant ought to have established the transaction. Now we will go to the evidence on this aspect. Whether the main transaction itself was doubtful as indicated by the appellate Court. But, when the transaction is admitted by the accused, but disputing only portion of the consideration, the question which arises for consideration is whether the appellate Court is right in its finding. But, is not right in this finding, in view of the Judgment of the Honourable Supreme Court in the case of ***Jain P.Jose Vs. Santosh and another***. So that part of the finding of the appellate Court may not be correct.

15.But, one disturbing feature that was brought to the notice of this Court at the time of argument is that the complaint was filed after limitation period. To condone the delay, a petition was filed by the complainant to condone that delay. But, even before condoning the delay the complaint was taken cognizance. C.M.P.No.12482 of 2012 was filed by the complainant to excuse the delay of 20 days in presenting the complaint. That was taken on file. But, it appears that no notice was issued to the accused in that CMP by the Judicial Magistrate, Pattukkottai. So the very



taking of cognizance by the trial court itself is not legal. It is not a mere irregularity, but illegality.

16. Whether in such circumstances, the cognizance is bad under law is no more res-integra, in view of the judgment of the Honourable Supreme Court in the case of ***Prem Chand Vijay Kumar vs. Yashpal Singh and another*** reported in which was also conferred with the Judgment of High Court of Judicature at Patna, in the case of ***Amjad Ali Khan @ Guddu Khan Son of Later Abdul Monaf Khan Resident of Village Vs. State of Bihar and another***, the argument was advanced by the complainant before the High Court that it is only irregularity, which does not vitiate the proceedings. In view of the above said, now it is settled position that when condoning the delay, cognizance cannot be taken and if it is taken, it is bad under law. But, the trial Court has stated that it is only an irregularity and that too deemed to have been condoned, which is *per se* illegal. This also not properly brought to the notice of the appellate Court by the accused. So there is no finding by the appellate Court on the specific issue. So when the very cognizance itself is bad under law, the judgment of the trial Court was even though set aside by the appellate court for different reasons, I find no reason to interfere into the judgement of the appellate Court for these reasons also. So the appeal fails



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17. Accordingly, this criminal appeal stands dismissed. The

Judgment of acquittal passed by the appellate Court is hereby confirmed

though for different reasons.

27.11.2024

NCC: Yes/No

Index: Yes/No

Internet: Yes/No

TM

To

1. The Additional District and Sessions Judge, Thanjavur, at Pattukkottai.

2. The Judicial Magistrate, Pattukkottai.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN, J

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