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Crl.A.(MD).No.169 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.10.2024

DELIVERED ON : 27.11.2024

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.A.(MD).No.169 of 2012

Jeyaramdass

... Appellant/Complainant

Vs.

Uma Devi

... Respondent/Accused

Prayer: Criminal Appeal has been preferred under Section 378(4) Cr.P.C., to call for the records of the proceedings in C.C.No.99 of 2007 on the file of the Judicial Magistrate No.V, Madurai, to examine the legality of the proceedings of the impugned Judgment dated 22.05.2012, passed in C.C.No.99 of 2007 and set aside the said impugned Judgment dated 22.05.2012.

For Appellant : Mr.D.Saravanan

For Respondent : No Appearance

J U D G M E N T

This Criminal Appeal has been filed by the appellant to set aside impugned Judgment dated 22.05.2012, passed in C.C.No.99 of 2007 by the learned Judicial Magistrate No.V, Madurai.



2.The complainant filed a complaint with the following

averments:

Sathasivam, who is the husband of the accused and the complainant were friends. Sathasivam wanted to develop his business, by borrowing loan from Banking. He requested the complainant to give Rs.10,00,000/- as hand loan for the purpose of clearing Bank Loan. Rs.10,00,000/- was borrowed by the husband and he paid the money into the Bank and obtained clearance certificate. Later on the basis of the clearance certificate, the complainant arranged a loan for the husband from City Union Bank, S.S.Colony. When the money was demanded back, the husband was not ready to pay the money. Some of the Mediators were brought by the accused's husband for settling the issue. Apart from the principal amount Rs.2,40,000/- was the interest. He agreed to pay the same in three different cheques. Out of the three cheques, two cheques were honoured. One cheque for Rs.70,000/- was not honoured. Later, he paid Rs.30,000/- in view of the dishonoured cheque. Balance amount is Rs.40,000/-. He agreed to pay Rs.2,40,000/- after deducting Rs.30,000/-. At the time of borrowal, the husband of the accused gave 10 cheques for the amount. Those cheques were brought at the time of the Mediation process. But, however, the mediators pressurized the complainant and the accused for amicable settlement. The complainant filled up the cheque. But, the



accused has already filled the cheques as Rs.1,00,000/- each. At the request made by the accused and her husband, the cheques were presented for payment as mentioned in the tabulation in the complaint. The date of presentation is on 05.01.2007. It was returned on the same day, stating that it exceeds arrangements. Within 15 days from the date of receipt of the memo, statutory notice was issued on 16.01.2007. It was returned as unclaimed. Again the last notice was returned on 25.01.2007. So the complaint is lodged.

3.Before the trial Court on the side of the complainant he himself was examined as PW2 and 22 documents were marked on his side. On the side of the respondent two witnesses were examined and 7 documents were marked.

4.At the conclusion of the trial process, the trial Court found that the guilt of the accused was not proved beyond all reasonable doubt. Accordingly, acquitted the accused. Against which this appeal is preferred.

5.It is a case of acquittal. Now, let us straight away go to the evidence recorded by the trial Court. It was contended by the accused before the trial Court that the cheques were given as security for the loan amount



obtained by her husband. Borrowal of Rs.10,00,000/- from the complainant was admitted. The contradiction in the evidence of complainant was highlighted as to the date of issue of the present subject cheques. The panchayat or mediation mentioned in the complaint was doubted. On the date of borrowal the husband of the accused alleged to have executed pronote in favour of the complainant. Another plea that was taken by the accused is that the entire amount was discharged through Ex.D3. It was contended by the complainant that Ex.D3 is a fabricated document, figure has been altered as Rs.13.10 lakhs. On that ground a finding was recorded that Ex.D3 was known to the complainant even at the time of giving complaint before S.S.Colony police station.

6.Now, in the light of the above said finding, let us see the arguments advanced by the appellant. It is submitted by him that signatures in the disputed cheques were not disputed by the accused. Ex.D3 is a disputed document as mentioned above. In the police complaint itself it is admitted that pronote was executed in favour of the complainant by the husband of the accused. So finding recorded by the trial Court is not legal, which requires interference at the hands of this Court.



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7. Since it is admitted by the accused that the disputed cheques were issued by her as security towards the liability incurred by her husband, automatically Section 139 of the Negotiable Instruments Act will come into play. Whether the accused has rebutted the presumption is the only point to be decided. Straight away we will go to Ex.D3. Since a discharge plea has been taken by the accused as mentioned above, it is the contention on the part of the complainant that Ex.D3 is a fabricated document, the figures are corrected as Rs.13.10 lakhs. But the original amount is only Rs.30,000/- as mentioned in the complaint. Ex.D3 reads that towards the agreement the complainant received Rs.13.10 lakhs only. Now as mentioned above it is stated that the original amount is only Rs.30,000/- The word 'thirty' is scored of, letters were added before and altered. This plea was rejected by the trial Court. Reading of the voucher does indicate that not only in figure, but also in letters the amount is mentioned as Rs.13,10,000/-. Thirty has been stated as mistake it has been scored of. Absolutely, there is no evidence to show that this has been forged by the accused. The reason being that Ex.P1 complaint was given by the complainant on 15.07.2006 stating that the accused and her husband borrowed Rs.10,00,000/- and later failed to repay the same and thereby he was agitated. Ex.D3 is dated 31.12.2005. The present document is disputed one. In the complaint itself would have stated that on 31.12.2005 a sum of Rs.30,000/- was only paid by the husband of



the accused towards the amount borrowed. But nothing has been stated. So far no complaint is initiated by the complainant to show that the present Ex.D3 was fabricated by the accused.

8.Later a suit in O.S.No.118 of 2007 was filed before the District Munsif Court, Madurai Town, by the respondent and her husband against the complainant, seeking order of directing the complainant to return the documents given to the complaint at the time of borrowing the loan amount. In that the complainant filed a written statement stating that this was found out by him when the present cheques were issued and he made enquiry. At that time, the husband of the respondent has explained that by mistake in a hurry it has been written, later. That statement was filed in the month of July 2007 before that Civil Court and before filing the written statement the complaint was given on 15.07.2007. As mentioned above in the complaint nothing has been stated. So this itself clearly shows that the complainant is not even true to his own conscience.

9.Apart from that another glaring inconsistency in the complaint, which is apparent on the face of the record is that in a panchayat, the husband of the accused agreed to settle the principal amount of Rs.10 lakhs. The interest was concluded and agreed it as Rs.2.40 lakhs by the accused



and her husband. Towards the discharge of the interest only they issued three cheques. Out of the three cheques two cheques were honoured. The third cheque, which is for Rs.70,000/- was not honoured. For that amount a sum of Rs.30,000/- was paid and towards that only the present voucher under Ex.D3 was issued. But, nothing like that stated in the complaint. This material fact not only suppressed by the complainant in the police complaint, even at the time filing the complaint itself. So this creates a doubt in the mind of this Court as to the contention on the part of the complainant that Ex.D3 is a fabricated document. I find absolutely no substances in the arguments advanced by the complainant in this regard.

10.After knowing the issue of discharge receipt, it appears that he filed the complaint by using the cheques issued by the respondent at the time of borrowal. So on the sole ground, I find absolutely no reason to interfere in to the Judgment of the acquittal passed by the trial Court. Therefore, this appeal fails. Accordingly, stands dismissed.

27.11.2024

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

- 1.The Judicial Magistrate No.V, Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGOVA, J

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