BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.03.2025

DELIVERED ON : 25.03.2025

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.A.(MD).No.58 of 2022

Murugan ... Appellant/Respondent/Complainant

Vs.

R.Senthilkumar ... Respondent/Appellant/Accused

Prayer: Criminal Appeal has been preferred under Section 378 (2) Cr.P.C., to call for the records relating to the Judgment dated 21.12.2021 made in Crl.A.No.78 of 2019 on the file of Additional District and Sessions Court, Theni, reversing the order of conviction made in S.T.C.No.90 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court), Theni, dated 12.11.2019 and set aside the same as illegal.

For Appellant : Mr.R.Gandhi, Senior Counsel for Mr.T.S.Mohamed Mohideen

For Respondent : Mr.V.Kathirvelu Senior Counsel for Mr.E.Mareeskumar

JUDGMENT

This Criminal Appeal has been filed by the appellant to set aside the Judgment dated 21.12.2021 made in Crl.A.No.78 of 2019 on the file of Additional District and Sessions Court, Theni, reversing the order of conviction made in S.T.C.No.90 of 2017 on the file of the Judicial Magistrate Court (Fast Track Court), Theni, dated 12.11.2019 and set aside the same as illegal.

2.The facts in brief:

On 30.09.2016 the accused borrowed a sum of Rs.60,00,00/- from the complainant to develop his business, promising to repay the same with 12% interest. On the very same day itself the accused executed demand promissory note. After that no amount was paid by the accused either towards interest or towards Principal. After demand, the accused issued cheque on 31.07.2017, post dating the same as 07.09.2017 drawn on Canara Bank, Kankeyam Branch. Due to the issuance of the cheque the demand promissory note was closed. At the time of issuance of the cheque, only principal amount was demanded and not the interest amount. On 08.09.2017, he sent notice stating that the cheque will be presented for payment on 12.09.2017 and sufficient fund must be maintained in the account. On 13.09.2017, cheque was presented for payment through City Union Bank, Theni. It came to be returned as insufficient fund. After completing statutory formalities the present complaint was filed.

3.At the conclusion of the trial process the trial Court by the

Judgment dated 12.11.2019 found the accused guilty under Section 138 of the N.I. Act and sentenced him to undergo one year simple imprisonment and Rs.60,00,000/- as compensation with interest at the rate of 9% from the date of dishonour, in default 2 months simple imprisonment was ordered. Against which the accused preferred appeal before the appellate Court namely Additional District Judge, FTC, Theni in Crl.A.No.79 of 2019. By the judgment dated 21.12.2021, the appellate Court differed from the findings of the trial Court and found that the guilt of the accused was not proved beyond all reasonable doubt and accordingly, acquitted. Against which this appeal is preferred by the complainant.

4.After hearing both sides an enquiry was raised by this Court as to the maintainability of the appeal on the ground that since the appellate Court reversed the finding of trial and passed an order of acquittal whether against that acquittal order appeal will lie. On that ground appellant was heard and it is brought to the notice of this Court that by exercising the power under Section 378 (4) Cr.P.C. the appellant filed Crl.O.P.(MD).No. 2731 of 2022 and leave was granted to file the appeal. Since leave was already granted by this Court, it is clarified.

5.Heard both sides.

6.It is judgment of reversal. We will go to the judgment of the trial Court as to the reasons for the finding of guilt. The accused has not denied the signature in the disputed cheque. It was contended that the complainant has no capacity to lend such a huge amount of Rs.60,00,000/-. The cheque was removed by PW3 from the office of the accused. By misusing the same this false complaint has been filed. Apart from that it was contended that the statutory notice was not received by him.

7.Regarding the statutory notice it was found by the trial Court that the acknowledgment card under Ex.P8 contain the signature of Ramasamy, who is the father of the accused. Even the court summon was received only by Ramasamy in the very same address. So finding was recorded that it was duly served upon the accused by drawing presumption under Section 27 of the General Clauses Act.

8.Regarding the liability, since the signature is not denied and disputed presumption under Section 139 of the N.I. Act come to the operation and it is for the accused to rebut the presumption. In the light of the settled proposition of law the trial Court went on to discuss about the rebuttal. Regarding the second contention that the cheque was stolen by

PW3 handed over the same to the complainant for foisting the case, was disbelieved, since the accused has not examined himself as a witness and that apart no documentary evidence was produced to show that PW3 was removed from the employment. Regarding the capacity of the complainant to lend such a huge amount, it was also held that the capacity of the complainant to lend the money was established. One more ground of alibi was taken by the accused was also disbelieved stating that no proper evidence was let in this regard.

9.Coming to the judgment of the acquittal passed by the appellate Court, it concentrated only on one ground, namely the contents of Ex.P3, wherein, it has been stated that the accsued borrowed a sum of Rs. 60,00,000/- on 31.07.2015 for developing his business. He issued cheque on the very same day. The interest from the period 31.07.2015 to 31.07.2017 was written off. The balance amount, Rs.60,00,000/- towards discharge, he issued the cheque drawn on Indian Bank, Kangeyam Branch bearing No. 683089 post dating as 07.09.2017 in the account bearing No. 3129101000452.

10.But, however, the disputed cheque is pertaining to Canara Bank. The accused has no account in Indian Bank, Kangeyam. On that basis, the appellate court found that the complainant has not discharged the initial burden to prove that the disputed cheque was issued only towards discharge of legally enforceable liability.

11.In the light of the contra views, we will go to the arguments advanced on either side.

12.The learned senior counsel for the appellant would submit that the accused did not deny the signature in the disputed cheques. After receiving the statutory notice; by his father no reply was sent by the accused. As mentioned by the trial Court, summon in the complaint was issued to the very same address mentioned in the statutory notice. No evidence was let in by the accused to prove his contentions. The borrowal of the amount is corroborated by the promissory note, document of confirmation, etc. So according to him, the trial Court rightly appreciated the issue, but the appellate Court on a single point disbelieved the case of the complainant.

13.Per contra, it is submitted by the respondent that source of income to the complainant to lend such a huge amount was not established; Statutory notice was not issued to the respondent properly and issuing of advance notice intimating the proposed date of presentation itself creates doubt; The pronote was written by one Murugesan who is examined as PW3, the person who was removed by the accused from the employment. All the pronotes were written only by Murugesan and as well as the consent letters; So it is nothing but created; The Drawer of the cheque is not stated in the complaint. Both the pronote and cheques were evenly dated; Even no proper explanation was given by the complainant as to who received the statutory notice.

14.In reply to the above said argument it was submitted by the appellant that absolutely there was no finding by the appellate court with regard to the capacity. It is a clear finding by the trial Court as to the evidentiary value of DW1 and DW2, the appellate Court has not considered this point of finding recorded by the trial Court. So according to the appellant, interference is called for. The respondent would rely upon the following Judgments.

(i) The Judgment of this Court made in the case of ***K.Murali Vs. K.Santhanam and another*** in ***Crl.O.P.No.16498 of 2017*** dated 06.11.2017.

(ii) The Judgment of the Delhi High Court made in the case of ***Niraj Vs. Ramesh Pratap Singh @ Raju Singh*** in ***Crl.L.P.No.354 of 2012*** dated 23.07.2012.

(iii) The Judgment of this Court made in the case of ***K.Manoharan Vs. N.Kamatchi Reddiar*** in ***Crl.O.P.(MD).No.11647 of 2014*** dated 22.08.2019.

(iv) The Judgment of the High Court of Gujarat at Ahmedabad made in the case of ***Patel Vs. State*** in ***Crl.A.No.249 of 2005*** dated 23.01.2012.

(v) The Judgment of the Honourable Supreme Court made in the case of ***Basalingappa Vs. Mudibasappa*** reported in ***(2019) 5 SCC 418***,

15.The learned counsel for the respondent would submit that by preponderance of probabilities, he has discharged his burden of proof. Against which, the complainant did not establish the guilt of the accused beyond all reasonable doubt. So it was rightly recorded so by the appellate Court, which requires no interference.

16.First of all we will clear the issue raised in respect of Ex.P3. The scribe of Ex.P3 is examined as PW3 on the side of the complainant. He would say that on 30.09.2016, the accused borrowed a sum of Rs. 60,00,000/- from the complainant promising to return the same with 12% interest and executed the a demand promissory note. He signed as a witness in the promissory note. Later the accused defaulted. On 31.07.2017, the present document came into existence and he scribed the same, at the request made by the accused.

17.Now it is stated by the respondent that PW3 was enemical to the respondent, since he was removed from the partnership Firm due to some misbehaviour. To wreck vengeance he was used by the complainant to create documents. The creation of this document is verified by the contents itself, since the Bank in which the accused is having the account is wrongly stated. This according to the respondent will be sufficient to discard the evidence of PW3 and Ex.P3.

18.Per contra, as mentioned above, it is contended by the appellant that even though the Bank name differs, but, the account number squarely tallies with that of the disputed cheque. So a mistake in mentioning the name of Bank cannot be taken seriously in view of the documentary evidence in the form of cheque.

19.So when we compare the account number mentioned in the disputed cheque with that of the account number mentioned in Ex.P3, it tallies. Now, we will go to the enmity suggested by the respondent. During the course of cross examination, PW3 would admit that for about several years, he was working under the accused and would further admit that the accused was doing finance business through out Tamil Nadu. On those two dates namely on the date of borrowal and on the date of Ex.P3, he was available on that place. To a suggestion that because of the misappropriation made by him he was removed from the employment, he denied. It was further suggested that the signed cheque kept by the accused was stealthily taken from his office and this case has been foisted. Except the suggestion, no other evidence is available to show that the disputed cheque was removed from the office of the accused for the purpose of foisting this case. Simply because PW3 signed as an attesting witness in both the occasions in the absence of any concrete and basic evidence regarding the motive his evidence cannot be disbelieved. The accused has not come to the box to speak about all those affairs. For valid reasons the evidence of DW1 and DW2 was rejected by the trial Court. As pointed out by the trial Court except putting some suggestion to PW3 and PW1 nothing concrete was brought on record regarding the enmity. So Ex.P3 was rightly taken into account by the trial Court. But, the appellate Court as mentioned above on the single ground of wrong mentioning of the name of the Bank discarded the Ex.P3.

20.Only in this context the learned counsel for the appellant would submit that when the accused has not denied and disputed the signature under Ex.P1, naturally the presumption will arise and the accused failed to discharge the burden of proof even by preponderance of probabilities. The story projected by the respondent that Ex.P1 was stealthily removed from his office and this case is foisted is beyond one's imagination.

21.Regarding the financial capacity, since it was admitted by the accused himself that the complainant himself and others were partners in a company called Theni Capital, engaged in money lending business, now it is too late for him to raise this plea. When that is the suggestion put to PW1 by the accused now, he cannot dispute the financial capacity of the complainant.

22.This suggestion itself does indicate that there were financial dealings between the complainant and accused at one point of time. Something gone out of the control and the accused was financially liable to give money to the complainant. Only on that occasion, it appears that the present cheques and subsequent Ex.P3 came into existence. Even before this Court, after hearing both sides arguments, attempt was made by this

Court to settle the issue. The matter was referred to the Mediation. But, it could not be settled due to difference of opinion regarding the amount to be settled.

23.Now, the respondent wants to suppress all those affairs and tries to take advantage of the mistake committed while writing Ex.P3. Such sort of attempt shall not be permitted.

24.Coming back to the statutory notice, it appears that it was received by the father of the accused. Now, he wants to disown the same and tries to state that it was received by some unknown person. As mentioned above, it was rejected by the trial Court and rightly appreciated the facts and recorded the finding that it was a due service of notice. I find absolutely no reason to differ from that finding of the trial Court. The appellate Court without any valid reasons differed from the well considered finding recorded by the trial Court. On that ground this appeal is liable to be allowed.

25.Accordingly, this criminal appeal is allowed. The Judgment of the trial Court is restored. The Judgment of conviction and sentence passed against the accused trial Court is hereby confirmed. The accused shall be secured to serve the remaining sentence period, if any. The accused shall pay the compensation amount as directed by the trial Court, if not paid. Consequently, connected miscellaneous petition is closed.

25.03.2025

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

1.The Additional District and Sessions Judge, (Fast Track Court), Theni.

2.The Judicial Magistrate, (Fast Track Court), Theni.

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

G.ILANGOVAN, J

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