



CrI.A(MD)No.514 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.A(MD)No.514 of 2019

S.C.Sekar @ Chandrasekar

... Appellant

Vs

Kamala Ganapathy Subramaniam

... Respondent

PRAYER: Appeal filed under Section 372 of Criminal Procedure Code, to set aside the order of acquittal as made in C.A.No.57 of 2018 by means of a judgment dated 30.04.2019 passed by the learned Additional District and Sessions Judge, Palani, Dindigul District reversing the order of conviction and sentence as passed by the learned Fast Track Court (Judicial Magistrate Level), Palani, Dindigul District, dated 08.06.2018 made in CC No.56 of 2017 in the commission of offence as punishable under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.S.Palani Velayutham
For Respondent : Mr.C.Meenakshi Rama Prabhu



WEB COPY



Crl.A(MD)No.514 of 2019

JUDGMENT

The appellant/complainant in CC No. 56 of 2017 has lodged a private complaint as against the respondent herein before the learned Judicial Magistrate, Fast Track Court, Palani, Dindigul for the offence under Section 138 of Negotiable Instruments Act. The said complaint was taken on file by the learned Judicial Magistrate, the respondent was tried, found guilty, convicted and sentenced under Section 138 of Negotiable Instruments Act to undergo six months rigorous imprisonment with fine of Rs.5,000/-. As against the conviction and sentence imposed by the trial Court in CC No.56 of 2017, dated 08.06.2018, the respondent/accused has preferred an appeal before the Additional District and Sessions Court, Palani, Dindigul in C.A.No.57 of 2018 and the same was allowed by the first Appellate Court and the respondent/accused was acquitted by judgment, dated 30.04.2019. Aggrieved, the complainant has preferred this Criminal Appeal, challenging the judgment rendered by the first appellate Court in C.A.No.57 of 2018, dated 30.04.2019.



CrI.A(MD)No.514 of 2019

WEB COPY

2.The learned counsel appearing for the

appellant/complainant submitted that the respondent has borrowed a sum of Rs.20,00,000/- from the complainant and in discharge of the liability, she has issued a cheque bearing No.616817, dated 31.08.2016 to the complainant. When the same was presented by the complainant for encashment, it was returned as "stoppage of payment". The learned counsel further submitted that the disputed cheque belongs to the respondent/accused and the signature found in the cheque has also been admitted by her. Since the respondent/accused has not honoured the cheque and it has been returned without realisation, the appellant has issued a legal notice as required under Section 138(b) of Negotiable Instruments Act, however, it has not been received by the respondent and returned on 27.12.2016 that the respondent/accused was not available. Therefore, the appellant has lodged a private complaint and the same was taken on file in CC No.56 of 2017 by the learned Judicial Magistrate, Fast Track Court, Palani, Dindigul District.



CrI.A(MD)No.514 of 2019

WEB COPY

3. According to the learned counsel, once the signature found in the disputed cheque has not been denied by the respondent and the cheque has not been honoured, presumption arise under Section 139 of the Negotiable Instruments Act. However, without considering the same, the first Appellate Court has acquitted the respondent and therefore, the judgment of the first Appellate Court needs to be interfered with.

4. The learned counsel appearing for the respondent/accused submitted that the respondent is about 93 years old. At the time of occurrence, she was 87 years. She is a wealthy person, having no issues and taking advantage of the same, an attempt has been made by her power agent and her relatives to take away her properties under threat and coercion. They have foisted this false case as against the respondent/ accused. According to the learned counsel, the Cheque has been misused by her power agent. There is no necessity for her to borrow a sum of Rs.20 Lakhs from the complainant, who is not having any source of income.



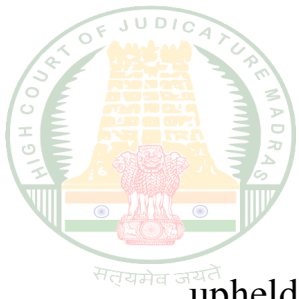
CrI.A(MD)No.514 of 2019

WEB COPY

5.The learned counsel has also pointed out that in the complaint, the appellant has taken a plea that this amount has been parted with for the purpose of purchasing a land by the respondent, however, there is no whisper about the property details. He also submitted that the notice required under section 138(b) of NI Act has not been complied with and therefore, there is no legally enforceable debt to make out a case for the offence under section 138 of the Negotiable Instruments Act.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.This is an appeal against acquittal. When the evidence presented in a case allows for two reasonable interpretations, one supporting conviction and the other supporting acquittal, the Court is obligated to adopt the interpretation that favours the accused's innocence. The Honourable Supreme Court has also consistently



CrI.A(MD)No.514 of 2019

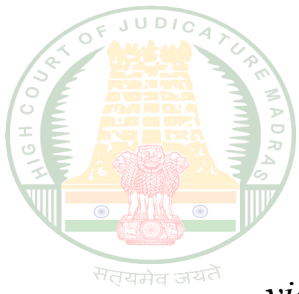
WEB COPY

upheld this principle in various judgments and one such judgment is, ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein, the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

“23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous



CrI.A(MD)No.514 of 2019

WEB COPY

view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

8. In yet another decision, in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

“(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on



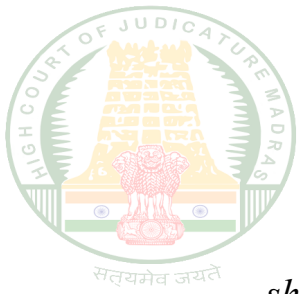
WEB COPY

limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court



Crl.A(MD)No.514 of 2019

WEB COPY

should not disturb the finding of acquittal recorded by the trial Court.”

9.In the present case on hand, the complaint has been instituted by the appellant that the respondent has borrowed a sum of Rs.20 lakhs and in discharge of that liability, she has parted with the cheque in dispute. In his evidence, the appellant/complainant has taken a plea that this amount has been parted with the respondent/accused for purchase of lands. Perusal of records shows that a specific question has been posed on the complainant's counsel about the property particulars, for which, he was not in a position to answer the question.The learned counsel for the respondent, on the other hand, has projected the case that the respondent is a wealthy person and she is not having any issues. Taking advantage of the same and in order to grab her lands, the power agent of the respondent has created this issue. This contradiction in the evidence as well as the complaint would disprove the case of the complainant that there is no legally enforceable debt.



Crl.A(MD)No.514 of 2019

WEB COPY

10. Moreover, the requirement of legal notice under section 138(b) of the Negotiable Instruments Act has not been complied with in this case. Though the trial Court has found the respondent guilty on the ground that the respondent has failed to defend her case by rebutting the evidence and the documents placed by the complainant, the first appellate Court has come to the conclusion that the complainant was not having sufficient source of income to lend such a huge amount to the respondent/accused and acquitted her. Therefore, this Court is not inclined to interfere with the judgment rendered by the first Appellate Court in C.A.No.57 of 2018, dated 30.04.2019.

In view of the above and in the light of the judgments rendered by the Honourable Supreme Court as stated supra, this Court is not inclined to entertain this Criminal Appeal and accordingly, this Criminal Appeal is dismissed.

20.03.2025

NCC : Yes / No.

Index : Yes / No.

vrn

10/11



WEB COPY



Crl.A(MD)No.514 of 2019

B.PUGALENDHI, J.,

vrn

Judgment made in
Crl.A(MD)No.514 of 2019

20.03.2025