

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Oct-04-2016

Judge : M. Venugopal

Appeal No. : Crl.O.P.No. 19701 of 2016 in Crl.A.SR.No. 42414 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard Mr.J.Franklin, Learned counsel for the Petitioner/Appellant/Complainant and Mr.D.Shivakumaran, Learned counsel for the Respondent/Accused.
2. The Petitioner/Appellant/Complainant has focused the instant Crl.O.P.No.19701 of 2016 before this Court praying for passing of an order by this Court to grant 'Special Leave' to him to file the present 'Appeal' against the Respondent in regard to the judgment of 'Acquittal' dated 17.02.2014 in S.T.C.No.1264 of 2010 passed by the Learned Judicial Magistrate-II, Salem.
3. According to the Learned counsel for the Petitioner/Appellant/Complainant, the trial Court had acquitted the Respondent/Accused in the main case in S.T.C.No.1264 of 2010 without appreciating the oral and documentary evidence

available on record.

4. The Learned counsel for the Petitioner/Appellant urges before this Court that the trial Court had wrongly presumed that the Appellant's father had conducted an unregistered chit, in which, the Respondent/Accused has given a blank cheque as a security, for which there is no sufficient evidence available on record.

5. The Learned counsel for the Petitioner/Appellant proceeds to take a stand that the Respondent/Accused had obtained loan from the Appellant and in fact, there was no information forthcoming from the Respondent/Accused under what circumstances, the cheque had passed on to the hands of the Appellant.

6. Lastly, it is the submission of the Learned counsel for the Appellant that the Respondent/Accused had not chosen to let in evidence to prove his case before the trial Court and also, the reasons assigned by the trial Court at the time of passing a judgment of 'acquittal' are not proper, valid and justifiable one in the eye of Law.

7. Per contra, it is the submission of the Learned counsel for the Respondent/Accused that the trial Court had appreciated the evidence of P.W.1 and the documents marked viz., Ex.P1 to Ex.P5 in a proper and real perspective manner and moreover, the trial Court had taken into account the discrepancies/contradictions in the evidence of P.W.1 and the averments made in the complaint and had finally acquitted the Respondent/Accused which need not to be set aside by this Court at this distant point of time.

8. Advancing his argument, the Learned counsel for the Respondent/Accused brings it to the notice of this Court that it is the specific case of the Appellant/Complainant that the Respondent/Accused is running a jewellery shop and he borrowed a sum of Rs.5 lakhs from the complainant for his urgent and family expenses in the month of January 2010 and later, inspite of repeated demands made by the complainant, the Respondent/Accused had issued/handed over a cheque for a sum of Rs.5 lakhs in favour of the complainant drawn at Bank of India vide 028055 dated 30.05.2010 on the same date.

9. It appears that the cheque was returned on 23.06.2010 by the Bank owing to 'insufficiency of funds'. Since the cheque was not honoured and the same was allowed to be dishonoured by the Respondent/Accused, the Petitioner/Appellant had preferred the complaint before the trial Court under Section 138 of the Negotiable Instruments Act, 1881 r/w. Section 420 IPC.

10. It is the evidence of P.W.1 (Appellant/Complainant) that when he demanded the loan amount from the Respondent/Accused on various occasions, on 30.05.2010, the Respondent/Accused had issued a cheque drawn from Bank of India bearing the same date and the said cheque was given in lieu of the loan availed by him.

11. It is the further stand of the Petitioner (in proof affidavit) that after receiving the cheque, the Respondent/Accused informed him that the cheque could be issued for collection after 15 days and believing the words of the Respondent/Accused, he deposited the cheque on 22.06.2010 with his bank namely, Karur Vysa Bank, situated at New Bus-stand, Salem but however, owing to 'insufficient funds', the cheque got returned.

12. P.W.1 in his cross examination had categorically averred that he got acquainted with the Respondent/Accused through his father and in fact, he does not know the name of the Respondent/Accused's father. Further, it is evident from the cross examination of P.W.1 that he admitted, that he only went to the Respondent/Accused and gave the loan amount and further, it was correct to state that in the sworn affidavit at para 3, he had mentioned that only the Respondent/Accused had approached him and asked for the loan. He had also proceeded to state in his evidence that when the Respondent/Accused approached him for a loan, he (the Appellant) went to him and gave the loan and he had not mentioned either in his notice, complaint or sworn statement that he went to the Respondent/Accused house and tendered the money.

13. In this connection, it is not out of place for this Court to make a pertinent mention that P.W.1 (Appellant/Complainant in his cross examination) had deposed in a clearcut fashion that at the time of giving loan, he had received the cheque from the Respondent/Accused. Also, the Appellant/Complainant in his complaint

had only mentioned about the month and year i.e., January 2010 but not mentioned the date on which the money was paid to the Respondent/Accused.

14. Apart from the above, the Petitioner/Appellant/Complainant had deposed in his evidence that he sold his own land for a sum of Rs.6,30,000/- and also, admitted that he had not mentioned in his complaint or in the sworn affidavit about the receipt of money through sale of land and in fact, he had proceeded to make a mention that he does not remember the month on which the land was sold by him but he had mentioned the year 2009, on which, the land was sold.

15. Also, P.W.1 in his evidence had stated that the Respondent/Accused had handed over the filled up cheque to him and in fact, he had also stated that his father had conducted an unregistered chit firm and his father had known about the loan that he had given to the Respondent/Accused. Furthermore, P.W.1 had also deposed that presently he and his father are living separately.

16. It is to be noted that the Petitioner/Appellant/Complainant owes a duty in law to establish that the Respondent/Accused had issued a cheque in question for the purpose of a subsisting debt/liability or for a 'legal enforceable debt'. The initial burden lies on the Petitioner/Appellant to show that he had lent money to the Respondent/Accused and that the Respondent/Accused had given a cheque towards the loan amount in question.

17. At this stage, it cannot be forgotten that the Respondent/Accused under the constitutional frame of things is entitled to maintain silence and it is for the Appellant/Complainant to prove the case before a Court of Law beyond all reasonable doubts. If the Respondent/Accused raises some probable defences which are quite genuine and reasonable one, then, it is worthy of acceptance by the concerned Court.

18. It is to be pointed out that the High Court is to bear in mind that the trial Court had the best opportunity and full advantage to observe the demeanor of witnesses in the witness box. Moreover, the High Court is not entitled to substitute its view on a totally different perspective, unless it arrives at a clearcut conclusion that the findings rendered by the trial Court are indeed a perverse one. The important

aspect to be noted is that to avoid serious miscarriage of justice, the Hon'ble High Court can interfere in a given judgment of 'Acquittal' case based on the views taken by the trial Court which are unknown to the well laid down principles of Law.

19. As far as the present case is concerned, it is to be pointed out by this Court that the evidence of P.W.1 (Appellant/Complainant) is not free from any discrepancies/contradictions, in fact, the Petitioner/Appellant has come out with a categorical case against the Respondent/Accused. In the present case, insofar as the evidence of P.W.1 (the Appellant/Complainant) is concerned, admittedly, he had mentioned at para 3 of his sworn statement that the Respondent/Accused had approached him and asked for a loan, who in his evidence he had fascinatedly stated that it was not correct to state that the Respondent/Accused had approached him and obtained the loan. Furthermore, it is latently and patently quite clear from the evidence of P.W.1 that the Appellant/Complainant had not mentioned that he went to the house of the Respondent/Accused and gave the money either in his notice, complaint or in sworn affidavit. Suffice it for this Court to unerringly point out that there is indeed a contradiction/discrepancy in regard to the manner/method of the Respondent/Accused asking for a loan from the Appellant. Because of the contradictions/discrepancies of the evidence of P.W.1, it is quite natural for a Court of Law not to believe the version and the evidence projected by P.W.1 must be cogent, coherent and convincing one.

20. At this stage, the stand of the Respondent is that the Respondent/Accused knew the Appellant's father only because of the unregistered chit transactions/business conducted by him but for what reason he had given a cheque to the Appellant's father had not been stated on the side of the Respondent/Accused. However, on the side of the Respondent/Accused, a heavy reliance is placed on the evidence of P.W.1/Appellant/Complainant to the effect that at the time when he gave loan, he received the cheque from the Respondent. This evidence of P.W.1 (Appellant/Complainant) in fact cuts this case has projected on his side.

21. Be that as it may, in the light of qualitative and quantitative discussions and also, this Court taking note of the evidence of P.W.1/Appellant/Complainant in

entirety and also bearing in mind of the overall assessment of the facts and circumstances of the present case in a cumulative fashion, comes to a consequent conclusion that the trial Court had come to a correct conclusion that the Petitioner/Appellant had not established his case in respect of an offence under Section 138 of the Negotiable Instruments Act, 1881 as against the Respondent/Accused. In short, this Court is quite in agreement with the view taken by the trial Court in acquitting the Respondent/Accused under section 255(1) of Cr.P.C., although the earnest endeavour has been made by the Petitioner/Appellant's counsel to project the case of the Petitioner/Appellant/Complainant, yet this Court is not in a position to accept the contentions raised on behalf of the Petitioner/Appellant/Complainant because of the simple reason that the trial Court had rendered factual findings and the same are not capricious, arbitrary and perverse one. Further, they do not suffer from any material irregularities or patent illegalities/infirmities in the eye of Law. Consequently, the Criminal Original Petition sans merits and accordingly, the same is dismissed.

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