

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Sep-23-2016

Judge : M. Venugopal

Appeal No. : Crl.O.P.No. 14216 of 2016 in Crl.A.SR.No. 24665 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard Mr.S.Kaithamalai Kumaran, Learned counsel for the Petitioner/Appellant/Complainant and Mr.N.Manokaran, Learned counsel for the Respondent/Accused.

2. The Petitioner/Appellant/Complainant has preferred the instant Crl.O.P.No.14216 of 2016 before this Court 'Seeking Leave' to file an 'Appeal' in Crl.A.SR.No.24665 of 2016 as against the judgment dated 18.04.2016 made in S.T.C.No.233 of 2012 passed by the Learned Judicial Magistrate, Fast Track Court-I, Erode in acquitting the Respondent/Accused.

3. According to the Learned counsel for the Petitioner/Appellant/Complainant, the judgment of the trial Court in acquitting the Respondent/Accused in S.T.C.No.233

of 2012 by means of a judgment dated 18.04.2016 is contrary to Law, Weight of evidence and Probabilities of the case.

4. The Learned counsel for the Petitioner/Appellant/Complainant urges before this Court that the trial Court has not noted the fact that the signature seen in the disputed cheque is similar to that of the Respondent/Accused and therefore, the statutory presumption arises under Section 138 of the Negotiable Instruments Act.

5. It is represented on behalf of the Petitioner/Appellant/Complainant that the trial Court had not appreciated the ingredients of Section 139 of the Negotiable Instruments Act, 1881 which arises presumption that the cheque in question was issued towards discharge of any existing debt or liability.

6. Yet another plea taken on behalf of the Petitioner/Appellant/Complainant is that the legal notice was served on the Respondent/Accused to the last known address and the accused cannot take advantage of stating that the legal notice in question was not served on him without considering the fact that no intimation was furnished to the postal department for shifting his residence.

7. The Learned counsel for the Petitioner/Appellant/Complainant takes a stand that the trial Court failed to take into account of a vital fact that no notice was issued to the Respondent/Accused by setting forth his case and in fact, the observation of the trial Court in the judgment to the effect that 'there is no transaction between the parties' is an illegal and invalid one in the eye of Law.

8. Lastly, the Learned counsel for the Petitioner/Appellant/Complainant brings it to the notice of this Court that even as per the oral evidence of the Respondent/Accused, he has to repay a sum of Rs.8 lakhs to the Petitioner/Appellant/Complainant and the contra finding rendered by the trial Court is without any legal basis.

9. At this stage, this Court very pertinently points out that the High Court has all requisite powers to review the whole gamut of evidence available on record giving necessary weightage to the views expressed by the trial Court as regards the credibility of witnesses. If the findings of the trial Court are perverse, then this

Court can rightly interfere to secure the ends of justice. At the same time, in reversing the finding of acquittal, it is to be remembered that a 'Court of Law' is to take into consideration each ground on which the order of acquittal was passed and to record its own reasons for not accepting those grounds and not subscribing to the views expressed by the trial Court.

10. In the instant case on hand, it is the specific case of the Petitioner/Appellant/Complainant that the Respondent/Accused had borrowed a sum of Rs.7 lakhs from the Petitioner on 27.11.2007 and issued a post dated cheque drawn on the Karur Vysya Bank Ltd., Perundurai branch.

11. Furthermore, it is represented on behalf of the Petitioner/Appellant/Complainant that when the cheque in question was presented for collection on 27.12.2007 before the complainant's Banker Karur Vysya Bank, Erode Branch, it was returned on the ground of 'funds insufficient'.

12. That apart, it transpires that a legal notice dated 04.01.2008 was issued by the Petitioner to the Respondent/Accused and the same was returned on 17.01.2008 with an endorsement 'intimation given, unclaimed'. Thereafter, it appears that the Petitioner had lodged a complaint in S.T.C.No.233 of 2012.

13. In this connection, this Court relevantly points out that the Petitioner/Appellant/Complainant issued the legal notice through the Learned counsel/Ex.P3 dated 04.01.2008 addressed to the Respondent had stated that on 27.11.2007, the Respondent had borrowed a sum of Rs.7 lakhs for his urgent needs and towards discharge of his liabilities, on the same day, a post dated cheque bearing No.216663 dated 27.12.2007 drawn for a sum of Rs.7 lakhs was given and when the cheque was presented for collection, the same got returned namely, being dishonoured for 'want of funds'.

14. The principal stand taken on behalf of the Petitioner/Appellant/Complainant is that the Respondent/Accused had issued a cheque knowing fully well about the insufficient funds in his Bank account and when the same was dishonoured, the Petitioner/Appellant/Complainant had filed the complaint before the competent trial Court.

15. Per contra, the Respondent/Accused before the trial had taken a prime stand that the Petitioner/Appellant/Complainant had no whither or hither reasons to lend a sum of Rs.7 lakhs to him. However, on behalf of the Petitioner/Appellant/Complainant before the trial Court, the reliance was placed on the exhibits viz., Ex.P13 to Ex.29 to show the capacity/ability of the Petitioner/Appellant/Complainant to lend the aforesaid sum to the Respondent/Accused.

16. It is to be noted that P.W.1 (Complainant) in his cross examination had deposed that the Respondent/Accused came to his house and demanded money and since he had the money at that time, he lent the money to him on that day itself. Furthermore, it is the evidence of P.W.1, the Respondent/Accused demanded/asked a sum of Rs.7 lakhs from him and he immediately paid the said sum in his house and the said sum of Rs.7 lakhs, was obtained four years before through agriculture and he had no documents to show that he had sold the agriculture producers.

17. Insofar as the present case is concerned, it cannot be forgotten that the Petitioner/Appellant/Complainant had not produced any documentary evidence to show that he had Rs.7 lakhs in his possession and as seen from the bank account on 27.11.2007, in his account, he had only a sum of Rs.1681/- and from March 2007 to March 2008, in his account, he had only a maximum sum of Rs.1710/-. Therefore, it is latently and patently quite clear that if really, he had a sum of Rs.7 lakhs in his possession at his house, then naturally, as a prudent man, the Petitioner/Appellant would have deposited the amount in his bank account. Also that, Ex.P18 to Ex.P20, Ex.P26 to Ex.P29 were not in the name of the Petitioner/Appellant/Complainant and in this regard, the trial Court had rendered a categorical factual finding.

18. Besides this, a cursory perusal of Ex.P22 and Ex.P23 would unerringly point out that the documents in question were pertaining to the year 2006-2007 and by virtue of these documents, it could not be safely concluded that the Petitioner/Appellant/Complainant had given the money mentioned therein. Even in Ex.P24, LIC details does not mentioned that there was a sum of Rs.7 lakhs in

favour of the Petitioner/Appellant/Complainant. Therefore, this Court comes to a resultant conclusion that the Petitioner/Appellant/Complainant in the instant case had miserably failed to satisfy the subjective conscience of this Court to the effect that he had sufficient money of Rs.7 lakhs at his house and he had kept the sum in his house for 4 years without depositing the same into the Bank, of course, in his bank account.

19. Even the plea that the sum of Rs.7 lakhs was earned through business was also not proved by the Petitioner/Appellant/Complainant and added further, it creates a simmering doubt as to why such a huge sum of Rs.7 lakhs purported to have been lend to the Respondent/Accused, had not find place in the Income Tax accounts of the Petitioner/Appellant/Complainant. Suffice it for this Court to point out that the Petitioner/Appellant/Complainant in the present case had not established that the Respondent/Accused is to pay the sum of Rs.7 lakhs towards the 'Legal Enforceable Debt' in terms of ingredients of the Negotiable Instruments Act, 1881.

20. In fact, D.W.1 in his cross examination had clearly stated that from the Petitioner/Appellant/Complainant he had taken a loan of Rs.10,000/- for business purpose. Also, it is the evidence of D.W.1 that there was a relationship between himself and his son-in-law for the past 10 years in connection with the business of Gram Dhall and in the said business, the Respondent/Accused had sustained loan and the amount was paid in piece meal.

21. Furthermore, it is the stand of the Respondent/Accused that the cheque in question was given by him to the Petitioner/Appellant towards security.

22. As far as the present case is concerned, except ipsi dixit of the evidence of P.W.1, there are no oral and documentary evidences to show that the Respondent/Accused had received a loan of Rs.7 lakhs and in short, the trial Court on an appreciation of the entire oral and documentary evidence available on record had come to a resultant conclusion that the Petitioner/Appellant/Complainant not proved his case beyond reasonable doubts under Section 138 of the Negotiable Instruments Act and resultantly, acquitted the Respondent/Accused and the said judgment of acquittal in the considered opinion

of this Court is not a perverse, capricious and attributed one. Per contra, the same is quite in tune with the available materials on record and in fact, the trial Court had marshal the necessary fact and Law and it came to the aforesaid decision of acquitting the Respondent/Accused, of course, based on the facts and circumstances of the present case which float on the surface and the said decision of judgment of acquittal is free from any flaw. Consequently, this Court holds that the Petitioner/Appellant/Complainant has not made out a case for allowing the Special Leave Petition and accordingly, the Criminal Original Petition is dismissed.

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