

Anna Poorani Vs. Dr.Saravanan

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Court : Chennai

Decided On : Mar-09-2015

Judge : M.Sathyanarayanan

Appellant : Anna Poorani

Respondent : Dr.Saravanan

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

09. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.197 of 2008 Anna Poorani ... Appellant/ Complainant Vs. Dr.Saravanan (Cr.No.237 of 2000) ... Respondent/ Accused Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order passed in S.T.C.No.53 of 2007, dated 19.02.2008, by the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District. !For Appellant : Mr.K.Samidurai ^For Respondent : Mr.K.Mahendran :

JUDGMENT

The appellant is the complainant in S.T.C.No.53 of 2007 on the file of the Court of Judicial Magistrate, Aruppukkottai, Virudhunagar District and aggrieved by the order of acquittal, dated 19.02.2008, has filed this Criminal Appeal.

2. For the sake of convenience, the array of parties as per the nomenclature before the trial Court, is adopted herein also.

3. The complainant has filed the above said complaint, stating among other things that she and the accused are related to each other and the accused had conducting a chit and for that purpose, has borrowed a sum of Rs.3,00,000/- in the year 2001. During the year 2004, the accused, for the purpose of putting up a nursing home, requested the complainant, to advance some amount and accordingly, the complainant pledged 25 sovereigns of gold jewels and gave a sum of Rs.1,00,000/- and by using the said amounts, the accused is running the nursing home/clinic.

4. The complainant would further contend that in spite of the repeated demands, the accused did not pay any amount. The complainant also lodged a complaint on the file of the All Women Police Station, Aruppukkottai, against the accused, based on which, a case in Cr.No.1 of 2005 was registered and pendency of the criminal case, a compromise has been reached, wherein the accused has paid a sum of Rs.3,00,000/- to the complainant and promised to pay a sum of Rs.2,00,000/- towards jewels and accordingly, issued two cheques for a sum of Rs.1,00,000/- each, in favour of the complainant. The said cheques were presented and returned with an endorsement "Funds Insufficient" and a statutory notice under Ex.P.7 was also issued, for which, the accused sent a reply under Ex.P.8 with untenable allegations/averments and since he did not pay the amount within fifteen days from the date of receipt of the statutory notice, has filed the complaint. The said private complainant was taken cognizance and on summons, the accused appeared and he was questioned and he denied the charge.

5. The complainant has examined himself as P.W.1 and marked Exs.P.1 to P.9.

6. The accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

7. On behalf of the accused, D.W.1 to D.W.3 were examined and he did not mark any documentary evidence.

8. The trial Court on consideration of the oral and documentary evidence, has found the accused not guilty and dismissed the complaint and released him under

Section 255(1) Cr.P.C, vide impugned judgment dated 19.02.2008 and aggrieved by the same, the present appeal has been filed.

9. Mr.K.Samidurai, learned Counsel for the complainant has made the following submissions:

9. 1. The fact that the accused is running a hospital is not in dispute and so also, the relationship. 9.2. The accused did not dispute his signatures in the impugned cheques, marked as Exs.P.1 and P.2 and once the said fact is admitted, the presumption operates against him under Section 139 of the Negotiable Instruments Act and therefore, the burden is on the accused to dislodge the presumption, but, he failed to do so. 9.3. The defence projected by the accused that after the compromise, the complainant promised to return the cheques and when it was insisted, she replied by stating that the cheques were lost, has not been substantiated for the fact that no defence witness or exhibits were marked to substantiate the same.

10. In sum and substance, it is the submission of the learned Counsel for the appellant that since the complainant has made out the ingredients of the commission of the offence under Section 138 of the Negotiable Instruments Act, by letting any oral and documentary evidence, the trial Court ought to have convicted and sentenced him accordingly.

11. In support of his submissions, the learned Counsel for the complainant has placed reliance on the decision of the Honourable Supreme Court in Rangappa v. Sri Mohan reported in (2010) 11 Supreme Court Cases 441.

12. Per contra, Mr.K.Mahendran, learned Counsel for the accused would submit that in Cr.No.1 of 2005, the allegations pertain to an alleged act in administering sedative and raping the complainant and according to P.W.1, the matter has been compromised and the accused has paid a sum of Rs.3,00,000/- and towards the value of the jewels, said to have given, he gave two cheques and the said version cannot be believed for the reason that the allegations pertain to the accused are very serious in nature and no person of common sense and prudence, would have advanced the amount to enable the accused to start a clinic and hence, it cannot

be believed at all.

13. It is further submission of the learned Counsel for the accused that though it is stated by the complainant that the case in Cr.No.1 of 2005 has been compromised, D.W.1 and D.W.2 did not support his case and according to D.W.1, the complaint given by the complainant which came to be registered in Cr.No.1 of 2005, has been closed as 'mistake of fact' and therefore, the subsequent payment of Rs.3,00,000/- and issuance of two cheques emanated from the said complaint and since the testimony of D.W.1 did not support of the case of the complainant, it has to be presumed that the cheques have not been issued towards legally enforceable debt.

14. Lastly, it is submitted by the learned Counsel for the accused that the trial Court on appreciation of oral and documentary evidence in proper perspective, has rightly passed an order of acquittal and hence, prays for the dismissal of this appeal.

15. This Court has carefully considered the rival submissions and also perused the typed set of documents as well as original records.

16. According to the complainant, she has given a complaint against the accused and a case in Cr.No.1 of 2005 on the file of the All Women Police Station, Aruppukkottai, came to be registered and it ended in a compromise, based on which, a sum of Rs.3,00,000/- was paid by the accused and for the cost of the jewels, he has issued two cheques, which, on presentation, got dishonoured, which led to the filing of the private complaint.

17. It is pertinent to point out at this juncture that in the complaint, the nature of the accusation levelled against the accused in Cr.No.1 of 2005 has not been stated.

18. A perusal of the testimonies of P.W.1 and D.W.1 would disclose that it was alleged in the case in Cr.No.1 of 2005 that the accused has administered sedative and had a forceful physical relationship with the complainant against her wish and will, which, according to the complainant/P.W.1 has entered into the compromise, based on which, the above said amount was paid and so also, two cheques were

issued.

19. D.W.1 was the Sub-Inspector of Police attached to All Women Police Station, Aruppukkottai and she would depose that the case in Cr.No.1 of 2005 has been closed as 'mistake of fact' and D.W.2 says that the records pertaining to the said crime number are not available in the Crime Records Bureau.

20. P.W.1 in the cross-examination would admit that when she advanced the loan/having money transaction, she has not used to get the documents as security, but used to note it. Admittedly, the entries made in the said diary or notebook have not been produced before the trial Court and her husband alone is the Income Tax assessee and she did not pay any Income Tax.

21. She also admitted that with regard to the sum of Rs.3,00,000/- paid on account of the case in Cr.No.1 of 2005, no proof is available and she would further admit that though she advanced the said amount to pay the chit amount, she was not aware of the said details.

22. P.W.1 would further depose that since the accused is related to her, she did not get anything in writing with regard to the advancement of the loan. Insofar as giving the details/raising the amounts by pledging/selling the jewels, she would admit that even to her brothers or sisters or neighbours/relatives, she has not done so and would further admit that with regard to the payment of Rs.3,00,000/- on account of compromise in the criminal case, neither the accused insisted for the receipt nor she issued any receipt. Further, she admitted that apart from the said two cheques, marked as Exs.P.1 and P.2 in the present complaint, the accused has also issued other cheques also. It was also admitted by P.W.1 that with regard to the commission of the offence and receipt of the advance amount by the accused, she did not lodge any complaint with the police.

23. The trial Court has taken into consideration the testimony of P.W.1 and has also taken note of the fact that she insisted for payment of Rs.25,000/- by way of cash, though the accused offered to pay by means of a cheque, found that on account of the said fact, it would not have been prudent or possible on the part of the complainant to get a sum of Rs.1,00,000/- each.

24. The trial Court has also taken into consideration the testimony of D.W.3, who is also related to the accused and found that as per his testimony, a sum of Rs.10,000/- was received and a compromise has been reached and no transaction has been taken place and further that the allegation that she has given 25 sovereigns of jewels to the accused to start a clinic/nursing home, cannot be believed at all.

25. The trial Court further found that the circumstances pleaded by the complainant for issuance of Exs.P.1 and P.2 - cheques, have not been proved or substantiated and found that the private complaint filed by the complainant is liable to be dismissed.

26. This Court, in the earlier paragraphs, has observed that in respect of serious allegations against the accused, in Cr.No.1 of 2005, the matter was compromised, according to the complainant, wherein a sum of Rs.3,00,000/- was paid by the accused, for which also, no receipt has been produced.

27. The trial Court has rightly taken note of the said fact of strained relationship and found that it would not have been possible for the complainant to accept the said two cheques, for a sum of Rs.1,00,000/- each, towards the jewels given by her to the accused.

28. P.W.1, in the cross-examination, has also made a crucial admission as pointed out by this Court in the earlier paragraphs and it would also probablise the defence version of the accused.

29. In Rangappa v. Sri Mohan reported in (2010) 11 Supreme Court Cases 441, the Honourable Supreme Court in paragraphs 26 to 28, held as follows: "The presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability. This is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, herein, there can be no doubt that there is an initial presumption which favours the respondent complainant. (Para 26) Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative objective of

improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof. (Para 27) The reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own. (Para 28)."

30. As per the ratio laid down by the Honourable Supreme Court that if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail and the accused can rely on the materials submitted by the complainant in order to raise such a defence, in the considered opinion of this Court, the accused was not only successful in picking holes of the complaint, but also, substantiated his defence by examining D.W.1 to D.W.3 and the trial Court, on a proper consideration of oral and documentary evidence, has rightly reached the conclusion to acquit the accused.

31. This Court, on an independent appreciation of the materials placed before it, is of the considered view that there is no error apparent or infirmity in ordering acquittal of the accused and finds no merit in this appeal.

32. In the result, this Criminal Appeal is dismissed, confirming the order passed in S.T.C.No.53 of 2007, dated 19.02.2008, by the learned Judicial Magistrate, Aruppukkottai, Virudhunagar District. Index :No 09.03.2015 Internet :Yes rsb To 1.The Court of Judicial Magistrate, Aruppukkottai, Virudhunagar District. M.SATHYANARAYANAN,J.

rsb Criminal Appeal (MD)No.197 of 2008 09.03.2015

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