

Raghunathan Vs. Selvarajan

Raghunathan Vs. Selvarajan

SooperKanoon Citation : sooperkanoon.com/827767

Court : Chennai

Decided On : Dec-18-2001

Reported in : 2002CriLJ3848

Judge : M. Karpagavinayagam, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 118, 138 and 139

Appeal No. : Cri. A. No. 898 of 2001

Appellant : Raghunathan

Respondent : Selvarajan

Advocate for Def. : T.P. Manoharan and ;D. Kamatchi, Adv.

Advocate for Pet/Ap. : K. Kalyana Sundaram, Adv.

Disposition : Appeal allowed

Judgement :

M. Karpagavinayagam, J.

1. Raghunathan, the appellant herein, aggrieved by the order of acquittal passed by the appellate Court, has filed this appeal.

2. The appellant herein filed a private complaint against Selvarajan, accused/respondent for the offence under Section 138 of the Negotiable Instruments Act.

3. The trial Court, after trial, convicted the accused and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs. 6,000/-.

4. Challenging the same, the respondent filed an appeal before the appellate Court, which, in turn, allowed the appeal and acquitted the accused. Hence, this appeal.

5. The learned counsel for the appellant, while assailing the said judgment of acquittal, would contend that the appellate Court wrongly acquitted the accused by setting aside the well-reasoned judgment of the trial Court, holding that the complainant did not prove that the cheque was issued towards the liability, and accepted the ease of the accused that the said cheque was given as security while there was an oral agreement of sale between the complainant and the accused, without considering the evidence of P.W. 1-complainant, proving the said aspect, taking into account, Sections 118 and 139 of the Negotiable Instruments Act.

6. The learned counsel for the respondent-accused, while refuting the abovesaid contention, would justify the reasonings given by the appellate Court for acquitting the accused on the strength of the judgments of the Andhra Pradesh High Court in Uplanche Mallikarjun v. Rat Kanti Vimala reported in 1997 Cri LJ 4237 and in A. Bhoosanrao v. Purushothamdas Pantani reported in .

7. I have carefully considered the submissions of both sides and perused the records.

8. On analysing the materials available on record, I find that the transaction with reference to the oral agreement of sale in respect of the property belonging to the complainant is entirely different from the transaction involving the issuance of the cheque for Rs. 1,25,000/- by the accused in favour of the complainant towards the discharge of hand loan obtained from the complainant by the accused.

9. It is the case of P.W. 1 both in the notice-Ex. P-4 and the complaint that the accused obtained a hand loan of Rs. 1,25,000/- and towards the discharge of the said liability, he issued a cheque for the said sum on 19-6-1998. In the deposition as well, P.W. 1 would specifically state that the loan was obtained by the accused, and on demand of the said amount, the accused issued a cheque, which was ultimately dishonoured.

10. It is also noticed from his cross-examination that he would specifically deny the suggestion made by the accused that the said cheque was received by the complainant towards the advance amount for the agreement of sale. In the light of the said materials, it cannot be said that the complainant has not established the fact that the cheque was issued towards the discharge of the liability.

11. In the light of those materials, as . contemplated under Sections 118 and 139 of the Negotiable Instruments Act, the respondent-accused ought to have produced materials to show that the cheque was not issued for discharge of hand loan, but the same was issued only towards the advance. In this context, it would be worthwhile to refer to some of the observations made by the appellate Court, which are factually incorrect.

12. It is stated by the appellate Court in paragraph 11 that the notice issued prior to the filing of the complaint, i.e., Ex. P-4, did not contain the particulars about the loan advanced by the complainant to the accused. On the other hand, as noticed above, the same was clearly mentioned both in the notice and the complaint, and was also corroborated in the evidence adduced by P.W. 1 before the Court.

13. Despite the appellate Court would come to the conclusion that no amount was parted with by the complainant, and the accused gave the cheque in question only towards the advance, even without any evidence available on record. The accused has never produced any material to show that the cheque was issued only as security. P.W. 1 also did not admit the case of the defence while suggestion was put to him in the box.

14. At this juncture, it would be relevant to refer the observation of the Supreme Court, which has been made in the judgment in K.N. Beena v. Muniyappan

reported in wherein, it is held as follows :

In our view the very impugned Judgment cannot be sustained at all. The Judgment erroneously proceeds on the basis that the burden of proving consideration for a dishonoured cheque is on the complainant. It appears that the learned Judge had lost sight of Sections 118 and 139 of the Negotiable Instruments Act. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part, of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt of liability. This presumption is rebuttable. However the burden of proving that a cheque had not been issued for a debt or liability is on the accused. This Court in the case of *Hiten P. Dalai v. Bratindranath Banerjee* has also taken an identical view.

15. The observation made above, would squarely apply to the present facts of the case, and therefore, the judgment rendered by the appellate Court, acquitting the accused, is wrong and the same is liable to be set aside, and accordingly, the appeal is allowed and the order of conviction passed by trial Court, convicting the respondent under Section 138 of the Negotiable Instruments Act and sentencing him to undergo simple imprisonment for three months and to pay a fine of Rs. 6,000/-, is restored.

In view of the above, the trial Court is directed to secure the custody of the respondent to undergo the remaining period of sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com