Krishnareddy. Vs.T.Viswanath

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Court : Chennai

Decided On : Jul-19-2012

Judge : R.Mala, J.

Acts : Negotiable Instruments Act - Section 138; Code of Criminal Procedure(CrPC) - Section 378; Evidence Act - Section 114; G.C.Act - Section 27

Appeal No. : Crl.A.No.579 of 2005

Appellant : Krishnareddy

Respondent : T.Viswanath

Advocate for Def. : Mr.K.Selvarangan, Adv

Advocate for Pet/Ap. : Mr.P.Mani, Adv.

Judgement :

Prayer.:- Appeal is filed under Section 378 of Cr.P.C. against the Judgment dated 27.04.2005 made in C.C.No.31 of 2004 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

JUDGMENT

1. The appeal arises out of the Judgment of acquittal dated 27.04.2005 made in C.C.No.31 of 2004 on the file of the District Munsif cum Judicial Magistrate,

Denkanikottai.

2. The appellant as a complainant preferred a private complaint stating that the respondent/accused borrowed a sum of Rs.75,000/- on 19.11.2003 and agreed to repay the same within two months. But, he had not repaid the said amount and for that, on 19.01.2004, he issued Exs.P1 to P3 - Cheques, dated 19.01.2004, each for Rs.25,000/- totalling Rs.75,000/-, bearing No. 809258, 809257 and 809256, drawn in favour of State Bank of Mysore, Bangalore. The Cheques were presented on 05.03.2004 for encashment before the Indian Bank, Thally and the same were returned on 07.03.2004, with return memos, Exs.P4 to P6, indicating as 'insufficient funds'. Immediately, he issued Ex.P8-legal notice to the accused on 23.03.2004 and the said notice was not served and the postal cover was returned on 16.04.2004. Therefore, the accused, with malafide intention, after knowing fully well that there was no sufficient funds to honour the cheques, issued the cheques, thereby, committed offence punishable under Section 138 of the Negotiable Instruments Act.

3. The learned Magistrate, after following the procedure, examined the witness as P.W.1 and marked the documents as Exs.P1 to P8 and placed the incriminating evidence against the accused, but, the same was denied by him. On the side of the accused, D.W.1 was examined and Ex.D1 was marked. After considering the oral and documentary evidence, the learned Magistrate acquitted the accused stating that there was no notice under Section 138 Proviso (b) of the Negotiable Instruments Act and also the complainant had not proved that Exs.P1 to P3 were issued for discharging the legally existing liability since he is not having sufficient financial status to lend such money. Aggrieved against the same, the present appeal has been preferred by the complainant.

4. The learned counsel appearing for the appellant submitted that he lent money on 19.11.2003. Since the accused had not in a position to pay the amount, he issued Exs.P1 to P3-Cheques dated 19.01.2004, each for Rs.25,000/-, totalling Rs.75,000/-. The cheques were presented for encashment by the complainant / appellant and the same were returned on 07.03.2004, with return memos, Exs.P4 to P6, indicating as 'insufficient funds. Therefore, the complainant issued legal

notice on 23.03.2004 to the accused, i.e. within 15 days. Admittedly, notice was not served. But, in the returned postal cover, it was mentioned as "Door locked, Not claimed, Returned to sender". Considering the same, the notice had been issued within 15 days and the same is valid one under Section 138 (b) of the Negotiable Instruments Act. To substantiate the same, the learned counsel relied upon the following decisions of the Apex Court

a) 2005 Criminal L.J. 127

b) 2007 AIR SCW 3578

c) 2010 (2) MWN (Cr.) DCC 5 (SC)

He further submitted that the respondent/accused has not disputed the signature in the Cheque. So, the appellant is entitled to invoke the presumption under Sections 118 and 139 of the Negotiable Instruments Act. Hence, he prayed for setting aside the order.

5. Resisting the same, the learned counsel for the respondent submitted that Ex.P8-legal notice was issued by one Muniraj and not by the appellant herein and there was no notice under Section 138 Proviso (b) of the Negotiable Instruments Act. He further submitted that the appellant has not filed any document to show that he has sufficient means to lend Rs.75,000/- on 19.11.2003. Hence, the trial Court has considered all the aspects in a proper perspective and came to the correct conclusion. Hence, he prayed for dismissal of this appeal.

6. Considered the rival submissions on either side and perused the documents.

7. Exs.P1 to P3 were issued on 19.01.2004. The Cheques were presented for encashment 05.03.2004 and the same were returned with return memos, Exs.P4 to P6 as 'insufficient funds' on 07.03.2004. Therefore, Ex.P8-legal notice had been issued on 23.03.2004.

8. Now, this Court has to decide whether Ex.P8-notice is valid under Section 138 Proviso (b) of the Negotiable Instruments Act?. Ex.P8-legal notice was sent by Registered Post and the same was returned as "Door locked, Not claimed,

Returned to sender". The returned postal cover was marked as Ex.P7. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel appearing on behalf of the appellant reported in 2005 Crl.L.J.127 (V.Raja Kumari vs. P.Subbarama Naidu and another), wherein, it was held that lawyer notice despatched by sender by post with correct address on it, it can be deemed to be served on sendee unless he proves that it was not really served.

9. While considering the decision reported in 2007 AIR SCW 3578 (C.C.Alavi Haji vs. Palapetty Muhammed & Anr.), it was held that pre-requirement of giving notice to drawer of cheque is mandatory and object of such requirement is to avoid unnecessary hardship to an honest drawer. In the citation, it was specifically stated that the Supreme Court has already held that when a notice is sent by Registered Post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed. Therefore, it is appropriate to incorporate paras 13 and 14 of the Judgment and the same are extracted hereunder:

13. According to Section 114 of the Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the G.C.Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready referrence, Section 27 of G.C.Act is extracted below:

"27. Meaning of service by post : Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expresssion "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. [Vide Jagdish Singh v. Natthu Singh; State of M.P. v. Hiralal & Ors. And V.Rajakumari Vs. P.Subbarama Naidu & Anr.]. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

10. In the present case on hand, while perusing the document Ex.P7, it was mentioned as "Door Locked, Not Claimed, Returned to Sender". In such circumstances, as per the dictum of the Apex Court, I am of the view that Ex.P8-notice has presumed to be served on the respondent. Hence, the notice is valid under Section 138 Proviso (b) of the Negotiable Instruments Act.

11. Now, this Court has to decide whether the trial Court was correct in holding that the appellant has not proved that Exs.P1 to P3 were issued for discharging the legally existing liability?. Admittedly, notice was sent by the appellant, but, there was no reply. On the side of the accused, Cheque Book Issue Register was marked as Ex.D1 and Mr.Prasath, Assistant Branch Manager of SBI, Sankarapuram, was examined as D.W.1. In his evidence, he deposed that he issued a cheque book, containing 10 cheque leaf, bearing Nos.809251 to 809260, in the year 1996. Therefore, it is appropriate to consider Ex.D1-Cheque Book Issue Register. In Ex.D1, the cheque book had been issued to the accused in the year 1996. Considering the same, the cheques, Exs.P1 to P3 were not issued in the year 2004.

12. D.W.1, in his chief examination, deposed that he received summons only in respect of 7 cheques and the same were issued only in the year 1996. Considering the evidence of D.W.1, I am of view that the appellant herein has not proved that the cheques were issued on 19.01.2004.

13. When P.W.1 was in witness box, a suggestion was posed to him that the respondent herein borrowed a sum of Rs.2,00,000/- from Kesavareddy, at that time, he issued 8 blank cheques. But he stated that he did not know about the issuance of 8 blank cheques. In his evidence, he fairly conceded that Kesavareddy is his brother and Muniraj, the appellant in another appeal No.578 of 2005, is his brother's friend. He further stated that he did not know whether the amount of Rs.2,00,000/- was paid in the year 1998 and he denied the suggestion that his brother, Kesavareddy, without returning promissory note and cheques to the respondent, through him, a complaint was filed against the accused. While considering the evidence of P.W.2-Muniraj, he stated that he has known that the accused borrowed a sum of Rs.75,000/- from Krishnareddy. Therefore, the evidence of P.W.2 has falsified the case of the appellant. D.W.1-Branch Manager of State Bank of Mysore, Sankarapuram Branch, in his evidence, has stated that seven cheques were issued in the year 1996. In such circumstances, I am of the view that the appellant has miserably failed to prove that he lent money on 19.11.2003 and he issued cheques on 19.01.2004. Furthermore, the appellant has not proved that he has sufficient means to lend the loan amount on 19.11.2003.

Even though the appellant had stated that he paid the amount to the accused, no document had been filed. Without obtaining any document, on 19.11.2003, the appellant lent a sum of Rs.75,000/-, is an unacceptable one. Further more, the appellant had not given any particulars that whether he received interest or waived interest, since he lent money on 19.11.2003 and received cheques on 19.01.2004. Therefore, the said factum has proved that the appellant has not lent money to the respondent and Exs.P1 to P3 were not issued for discharging the legally existing liability.

14. In such circumstances, I am of the view that the appellant has not proved that the cheques were issued on 19.01.2004, since the cheques were issued in the year 1996. Defence has stated that cheques were issued in the year 1996 to Kesavareddy, brother of the appellant in the year 1996 and the same had been repaid in the year 1998. In such circumstances, I am of the view that the appellant has not proved the ingredients of Section 138 of the Negotiable Instruments Act. So, the trial Court has considered this aspect in a proper perspective and came to the correct conclusion that the Judgment of acquittal does not suffer any infirmity and illegality. Hence, the appeal deserves to be dismissed.

15. In fine

a) the appeal is dismissed;

b) the Judgment of acquittal passed by the learned District Munsif cum Judicial Magistrate is hereby confirmed.