
(2008) 02 MAD CK 0245

In the Madras High Court

Case No : Criminal Appeal No. 1695 of 2002

Apple Credit Corporation Limited

APPELLANT

Vs

K. Subbaravamma

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Negotiable Instruments Act, 1881 (NI) — Section 138, 139

Citation : (2008) 02 MAD CK 0245

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : S. Venkatesan, for the Appellant; V. Chandrakanthan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The complainant before the trial Court has preferred this criminal appeal against the judgment of acquittal of the learned IX Metropolitan Magistrate, Saidapet, Chennai, dated 27.08.2002 pronounced in C.C. No. 3550 of 2001.

2. The above said calendar case was taken on file based on a private complaint preferred by the appellant herein u/s 200 Cr.P.C. alleging commission of an offence punishable u/s 138 Negotiable Instruments Act, 1881 (hereinafter referred as the Act) by the respondent herein/accused.

3. According to the complainant, the appellant/complainant and the respondent/accused entered into a hire purchase agreement in respect of a Car and the respondent/accused, being the hirer under the said hire purchase agreement, had issued two cheques bearing dates 18.01.2001 and 18.02.2001 each for a sum of Rs. 8,867/- towards the instalments. The said cheques had been drawn on Pinakini Grameena Bank, Head Office, Nellore, Andhra Pradesh. When the said cheques were sent for collection through the bankers of the appellant/complainant namely, Centurion Bank Limited, Anna Salai, Nandanam, Chennai,

the same were returned with an endorsement "Insufficient Funds" along with a banker's memo dated 26.02.2001. The same was received by the appellant/complainant on 07.03.2001 and on 10.03.2001 the appellant/complainant sent a registered notice calling upon the respondent/accused to make payment towards the dishonoured cheques. The said notice was received by the respondent/accused on 25.03.2001. However, he failed to make payment towards the amount covered by the cheques and hence the appellant/complainant was constrained to file the above said private complaint for prosecuting and punishing the respondent/accused for the above said offence.

4. On being served with the process, the respondent/accused appeared before the trial Court and pleaded not guilty, when he was questioned regarding the allegations made against him constituting the charge u/s 138 of the Act. In the trial that followed, two witnesses were examined as PW1 and PW2 and nine documents were marked as Ex.P1 to Ex.P9 on the side of the prosecution (complainant). One witness was examined as DW1 and one document was marked as Ex.D1 on the side of the accused.

5. At the conclusion of trial, on an appreciation of evidence, the learned IX Metropolitan Magistrate, held that the cheques were not proved to be issued towards the discharge of any legally recoverable debt or other liability and hence acquitted the respondent/accused by his judgment dated 27.08.2002. The correctness and legality of the said judgment is put in issue in this criminal appeal.

6. This Court gave its anxious consideration to the submission made by the learned Counsel on either side and also perused the materials available on record.

7. The complainant before the trial Court, who failed to secure a conviction for the offence punishable u/s 138 of the Act alleged to have been committed by the respondent herein, has come forward with this appeal. Admittedly, the dishonoured cheques, namely Ex.P2 and E.P3, had been issued towards payment of the monthly charges under the hire purchase agreement between the appellant/complainant and the respondent/accused. The subject matter of the hire purchase agreement was a Maruthi Car. As per the hire purchase agreement the ownership remained with the financier, namely the appellant/complainant and the possession of the vehicle had been handed over to the respondent/accused. It is also not in dispute that the said vehicle met with an accident on 05.06.1997 and received extensive damage. Under such circumstances alone the respondent/accused had not chosen to pay the future instalments. As the said vehicle was covered by a comprehensive insurance policy, as evidenced by Ex.D1, a sum of Rs. 2,30,000/- was paid by the insurer for the damage caused to the vehicle.

8. According to the appellant/complainant the respondent/accused, being the hirer received the entire amount from the insurance company on the basis of a no objection letter given by the appellant/complainant. The said version

happened to be the assertion of PW1 in the chief examination and in the first part of his evidence during cross-examination. But, at the latter point of his testimony during cross-examination, he has admitted the insurance amount was paid to one Sathyanarayan in whose name the insurance policy had been taken. It was his further admission that the Manager of Guntur Branch of the appellant/complainant concern gave a letter dated 31.12.1998 to the New India Assurance Company Limited expressing their no objection for making payment of the compensation amount to the said Sathyanarayan. It has also been admitted by PW1 that on 31.12.1988 itself a sum of Rs. 1,25,000/- was paid by the respondent/accused to the appellant/complainant.

9. It has also been admitted by PW1 that at the time of entering into the hire purchase agreement they had obtained 25 numbers of unfilled cheques from the respondent/accused. The admission of PW1 that a sum of Rs. 1,25,000/- was paid by the respondent/accused on 31.12.1998 and a letter expressing no objection for making payment of the compensation to Sathyanarayan was issued on the said date, will probablise the defence case of the respondent/accused that the entire amount was settled on 31.12.1998 and that is why the appellant/complainant chose to give a no objection letter to the insurance company to the effect that the compensation amount as per Motor Vehicle Insurance Policy could be released to Sathyanarayan.

10. PW1 has given testimony to the effect that the accident took place even prior to the issue of registration certificate for the Car. From Ex.P1 it is also obvious that a sum of Rs. 2,30,000/- was paid by the New India Assurance Company Limited to Sathyanarayan as compensation for the damage caused to the Car. Whether the said amount was collected and appropriated by the said Sathyanarayan for himself or else he got the amount on behalf of the then owner of the vehicle namely the appellant/complainant is not known. There is no piece of evidence to show on whose behalf the amount was received by the said Sathyanarayan. It is not in dispute that on the date of accident the appellant/complainant was the owner of the vehicle. Nor was it the evidence of PW1 that the said amount was received by Sathyanarayan on behalf of the respondent/accused.

11. It is admitted that the dishonoured cheques, marked as Ex.P2 and Ex.P3, had been issued towards the payment of the charges under the hire purchase agreement; that the cheques were obtained in 1997 itself; that the subject matter of the hire purchase agreement, namely the Maruthi Car, met with an accident and got totally damaged in the said accident that took place on 05.06.1997; that thereafter, on 31.12.1998 a sum of Rs. 1,25,000/- was paid by the respondent/accused and pursuant to the said payment the appellant/complainant issued a no objection letter for paying the compensation amount under the Motor vehicle insurance policy to Sathyanarayan; that till the date of accident the respondent/accused was making payments and that only there after he stopped making payments. The same will show that the liability towards

payment of charges under the hire purchase agreement had come to an end by 31.12.1998 itself and that thereafter there was no legally enforceable debt or liability of the respondent/accused towards the appellant/complainant. The evidence adduced through DW1 and the admission made by PW1 are enough to hold that on preponderance of probability, the respondent/accused has made out a case for the rebuttal of the presumption drawn u/s 139 of the Act. As such the burden to prove that the cheques were issued in discharge of a debt or other liability rests on the appellant/complainant. But there is no positive evidence to prove that the dishonoured cheques marked as Ex.P2 and Ex.P3 had been issued in discharge of a legally enforceable debt or other liability. In this case, the appellant/complainant has not come forward to divulge the actual circumstances under which, the cheques happened to be issued. In fact there is not even a whisper in the complaint regarding the date of hire purchase agreement, the subject matter of the hire purchase agreement and the other particulars of the same. However, the respondent/accused elicited everything from the mouth of PW1. When PW1 has admitted that twenty five blank cheques had been obtained at the time of entering into the hire purchase agreement and the dues up to the date of accident were collected through some of the said cheques and that on payment of Rs. 1,25,000/- made on 31.12.1998 the appellant/complainant gave a consent letter expressing no objection for issuing the compensation amount under the Motor Vehicle Policy to the erstwhile owner Sathyanarayan, the appellant/complainant shall be duty bound to explain under what circumstances the dishonoured cheques Ex.P2 and Ex.P3 happened to be issued two years after the said settlement. There is nothing in evidence to show the circumstances under which the cheques were issued. On the other hand, there is a clear admission made by PW1 that as many as twenty five cheques had been issued in 1997 itself. That itself will be enough to come to the conclusion that it was the appellant/complainant who was misusing the cheques obtained at the time of entering into the agreement with the respondent/accused.

12. There is every reason to accept the defence plea of the respondent/accused that the amount due to the appellant/complainant under the hire purchase agreement had been settled and there was no legally enforceable debt or other liability as on the dates of Ex.P2 and Ex.P3 cheques. As pointed out supra, the respondent/accused has adduced sufficient evidence to make his defence theory probable and thereby he has rebutted the presumption u/s 139 of the Act. As such, the burden shifts on the appellant/complainant to prove that there existed a legally recoverable debt or enforceable liability as on the dates of the cheques concerned. The evidence adduced on behalf of the appellant/complainant is not enough to substantiate the charge u/s 138 of the Act against the accused beyond reasonable doubt. Under such circumstances, this Court finds no defect or infirmity in the judgment of the trial Court holding that the respondent/accused not guilty of the said offence and acquitting him of the said offence. After meticulously weighing the evidence adduced on either side and applying correct principles of law regarding presumption, rebuttal of such presumption and

burden of proof, the learned IX Metropolitan Magistrate, Saidapet, Chennai has come to a correct conclusion and rightly acquitted the accused holding him not guilty of the offence which he stood charged. There is no ground, whatsoever, to interfere with the well considered judgment of the learned IX Metropolitan Magistrate, Saidapet, Chennai. There is no merit in the appeal and the same deserves to be dismissed.

13. Accordingly, the criminal appeal is dismissed.