IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.100 of 2014

M/s.The Dhanalakshmi Bank Ltd.,
A Public Limited Company
incorporated under the Companies Act
and Governed by Banking Regulation Act 1949
having their Registered Office at
"Dhanalakshmi Buildings", Thrissur, Kerala
and Branches among other places
at Standard Towers, Avinashi Road
Coimbatore 641 606
Rep.by its Branch Manager
Mr.D.Venkitesh ... Appellant/Complainant

vs.

Thilagavathee Alias Thilagavathy ... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment dated 19.6.2012 acquitting the accused in Calendar Case NO.348 of 2011 on the file of Judicial Magistrate, Fast Track Court, at Magistrate Level-II, Coimbatore (earlier in C.C.No.658 of 2010 of Judicial Magistrate No.6 of Coimbatore) and punish the respondent/accused for the offence committed by him with order of payment of compensation to the appellant/complainant by imposing fine under sec.357 of Cr.P.C.

For appellant : Mr.K.Rajasekaran

For Respondent : Mr.B.Vijayakumar

JUDGMENT

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This Criminal Appeal has been preferred against the order of acquittal passed in Calendar Case No.348 of 2011 by the Judicial Magistrate, Fast Track Court, at Magistrate Level-II, Coimbatore.

2. The appellant herein, as complainant, has filed a complaint under section 138 r/w Section 142 of the Negotiable Instruments Act, 1881, wherein the present respondent has been shown as sole accused. The complaint filed by the complainant has been taken on file in Calendar Case No.348 of 2011.

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3. It is averred in the complaint that for the purpose of discharging liability of the accused, he has given the cheques in question and the same have been presented in the concerned Bank and the concerned Bank has returned the same and subsequently, a statutory Notice has been issued and even after receipt of the same, the accused has not discharged his liability. Under the said circumstances, he has committed an offence punishable under section 138 of Negotiable Instruments Act.

4. The trial court, after pondering the available evidence on record, has found that the accused has not committed the offence punishable under section 138 of N.I.Act, 1881 and dismissed the complaint and thereby acquitted the accused. Against the order of acquittal, Criminal Appeal No.100 of 2014 has been filed on the file of this Court.

5. During pendency of the appeal, on the side of the appellant, a petition under section 391 of Code of Criminal Procedure, 1973 has been filed along with two documents and the same has been taken on file in M.P.No.1 of 2014.

6. The learned counsel appearing for the appellant has contended that along with M.P.No.1 of 2014, certain vital documents have been filed and the same may be admitted as additional evidence on the side of the appellant/complainant.

7. Per contra, the learned counsel appearing for the respondent has contended that no sufficient reason has been given for filing the cheques in question belatedly and therefore, the petition filed in M.P.No.1 of 2014 cannot be allowed.

8. It is an admitted fact that along with M.P.No.1 of 2014, two documents relating to cheques in question have been filed. Since the trial court has observed that on the side of the appellant/complainant, the documents mentioned in M.P.No.1 of 2014 have not been filed, this Court is of the view that in the interest of justice, the documents filed along with M.P.No.1 of 2014 can be marked by way of giving oral evidence on the side of the appellant/complainant. The respondent/accused can also be given sufficient opportunity to cross-examine the concerned witnesses. Under the said circumstances, the order of acquittal passed by the trial court is liable to be set aside and the matter is liable to be remitted to the file of the trial court.

In fine, this Criminal Appeal is allowed. The order of acquittal passed by the trial court in C.C.No.348 of 2011 is set aside and C.C.No.348 of 2011 is remitted to the file of trial court. In the trial court, the appellant/complainant is directed to mark the documents filed along with M.P.No.1 of 2014. The trial court is directed to dispose of C.C.No.348 of 2011 before the end of December, 2015 and report the same to the Registry without fail.

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Registry is directed to send all the records to the trial court forthwith and also directed to hand over the documents filed along with M.P.No.1 of 2014 to the appellant/complainant immediately.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr
To :

1. Judicial Magistrate, Fast Track Court,
at Magistrate Level-II,
Coimbatore

2. The Section Officer, Criminal Section, High Court, Madras.
3. The Section Officer, VR Section, High Court, Madras.

Crl.A.No.100 of 2014

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