

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Cr1.A.No.489 of 2015

D.Rajendran

... Appellant/Complainant

Vs.

S.R.Vijayaraghavan(alias)Vijayarajan ... Respondent /Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the judgment of acquittal made in STC No.74 of 2012 dated 17.06.2015 on the file of the FTC, Judicial Magistrate Court, Nagapattinam and convict the respondent accused in accordance with law.

For Appellant : D.Veerasekaran
For Respondent : Mr.C.Munusamy

JUDGMENT

The dismissal order dated 17.06.2015, passed in STC No.74 of 2012, by the Fast Track Court (Magistrate level), Nagapattinam, is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed the complainant in question under Section 138 of the Negotiable Instruments Act, 1881, on the file of the Court below, wherein the present respondent has been shown as sole accused.

3. It is averred in the complaint that the accused has received a sum of Rs.5,00,000/- by way of debt from the complainant and to that extent, he executed a promissory note and subsequently, on 10.06.011, the accused has given the cheque in question in favour of the complainant and the same has been put into concerned bank and the concerned bank has returned the same stating 'funds insufficient'. Subsequently, a legal 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 the Negotiable Instruments Act, 1881.

4. The Court below, after considering the divergent contentions put forth on either side, has dismissed the complaint by way of holding that the cheque in question has not been given in connection with an enforceable debt. Against the dismissal order, the present criminal appeal has been filed, at the instance of the complainant, as appellant.

5. The learned counsel appearing for the appellant/complainant has contended that for the purpose of meeting family expenses of the accused, he received a sum of Rs.5,00,000/- (Rupees five lakhs) from the complainant and to that extent, executed a promissory note and after some time, on 10.06.2011, the accused has given the cheque in question and under the said circumstances, the pro-note executed by him has been returned to him and the cheque in question has been presented in the concerned bank and the concerned bank has returned the same stating 'funds insufficient' and subsequently, a legal notice has been issued and even after receipt of the same, he has not discharged his liability and thereby, he committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and even though enormous evidence has been adduced on the side of the appellant/complainant, the trial Court has failed to look into the same and therefore, the dismissal order passed by the trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent has contended that there is no nexus in between the complainant and accused and the cheque in question has been given as a security to one Sangamithra, wife of Gopal and the same has been used for filing the present complainant and the trial Court, after evaluating the available evidence on record, has rightly found that the cheque in question has not been given in connection with an enforceable debt and therefore, the dismissal order passed by the trial Court does not require any interference.

7. The cheque in question has been marked as Ex.P1. The memo given by the concerned bank has been marked as Ex.P2. A copy of legal notice has been marked as Ex.P3.

8. The specific contention put forth on the side of the appellant/complainant is that by way of executing a promissory note, the accused has received a sum of Rs.5,00,000/- from the complainant and subsequently, the said pro-note has been returned to him, since he has given the cheque in question.

9. At this juncture, the Court has to look into the material averments made in the complaint, wherein it has not been specifically stated as to on which date a sum of Rs.5,00,000/- has been given to the accused and to that extent he executed a promissory note. If really, the accused has received a sum of Rs.5,00,000/- from the complainant by way of executing a pro-note, definitely, the same would not have been returned to him. Therefore, the story trotted out on the side of the complainant with regard to the alleged return of promissory note cannot be accepted.

10. Now the Court has to look into as to whether Ex.P1, the cheque in question, has been given by the accused in connection with an enforceable debt?

11. It is a settled principle of law that the cheque in question must be given in relation to an enforceable debt as per Section 138 of the Negotiable Instruments Act, 1881.

12. The complainant has been examined as P.W.1 and his specific evidence is that the name of the accused is Vijayarajan @ Vijayaraghavan. But there is no document for the purpose of showing that the accused is having an alias name. Further, the complainant has not known about the business alleged to have been done by the accused during the relevant period.

13. As already pointed out that even in the complaint, the date of borrowing as well as execution of pro-note have not been mentioned. Since those aspects are totally absent in the complaint, the Court can very well come to a conclusion that the cheque in question has not been given in connection with an enforceable debt. Further, the complainant has not established that he is having nexus with the accused in connection with Ex.P1. Therefore, viewing from any angle, the contention put forth on the side of the appellant/complainant cannot be accepted.

14. The trial Court, after considering the lack of evidence on the side of the appellant/complainant, has rightly found that the cheque in question has not been given in connection with an enforceable debt and therefore, the dismissal order passed by the trial Court does not call for any interference and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The dismissal order passed, in STC No.74 of 2012, by the Fast Track Judicial Magistrate, Nagapattinam, is confirmed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

msk

To

1.The Judicial Magistrate, Fast Track Court,
Nagapattinam

2.The Section Officer, Criminal Section,
High Court, Madras - 104.

+1 cc to Mr.D.Veerasekaran, Advocate, sr.54107

+1 cc to Mr.C.Munusamy, Advocate, sr.53795