IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.494 of 2015

Muthalamman Traders
rep.by its Proprietor Mr.S.M.Selvam, ... Appellant

vs.

V.Rajagopal ...Respondent

Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, 1973 to set aside the judgment dated 26.06.2015 passed in C.C.No.1442 of 2012 by the IV Fast Track Magistrate, George Town, on the file of the IV Fast Track Court, Metropolitan Magisrate, George Town, and call for the records and convict the accused for offence under Sections 138 and 141 of the Negotiable Instruments Act.

For appellant : Mr.P.Jesus Moris Ravi

For respondent : No appearance

JUDGMENT

The order of dismissal dated 26.6.2015, passed in Calendar Case No.1442 of 2012, by the Fast Track Court - IV Metropolitan Magistrate, George Town, Chennai, is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed the complaint in question under Section 138 of the Negotiable Instruments Act, 1881 and the same has been taken on file in Calendar Case No.1442 of 2012, wherein the present respondent has been shown as sole accused.

3. It is averred in the complaint that the complainant has been doing rice business. The accused has used to purchase rice from the complainant and thereby he is bound to pay a sum of Rs.75,000/- and in order to discharge the same, he has given the cheque in question on 29.12.2011 and the same has been put into concerned bank. The concerned bank has returned the same stating 'funds insufficient'

and subsequently, a statutory notice has been issued to the accused. After receipt of the same, he has given a false reply notice. Since the accused has not discharged his liability, he committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. The trial Court, after considering the available evidence on record, has found that the cheque in question has not been issued in connection with an enforceable debt and ultimately dismissed the complaint. Against the dismissal order passed by the trial Court, the present criminal appeal has been preferred, at the instance of the complainant, as appellant.

5. The learned counsel appearing for the respondent is not present. Under such circumstances, this criminal appeal is disposed of on the basis of contentions put forth on the side of the appellant.

6. The consistent case put forth on the side of the appellant/complainant is that due to rice business, the accused is bound to pay a sum of Rs.75,000/- to the complainant and for discharging the same, he has given the cheque in question dated 29.12.2011 and the same has been presented in the concerned bank. But the concerned bank has returned the same stating 'funds insufficient' and subsequently exchange of notices has been done and even after giving notice, the accused has failed to discharge his liability and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

7. The learned counsel appearing for the appellant/ complainant has repletedly contended that before filing the complaint, a statutory notice has been given to the accused and after receipt of the same, he has given a reply notice and the same has been marked as Ex.P5, wherein it has been clearly admitted to the effect that he used to purchase rice on credit basis from the complainant and further it has been admitted that he has given a blank cheque to the complainant, but the trial Court, without considering the aforesaid factual aspects has erroneously dismissed the complaint by way of holding that the cheque in question has not been issued in connection with an enforceable debt and therefore, the conclusion arrived at by the trial Court is not proper and under the said circumstances, the order of acquittal passed by the trial Court is liable to be set aside.

8. For considering the submissions made on the side of the appellant/complainant, the Court has to look into Ex.P5.

9. It is an admitted fact that Ex.P5 is a reply notice given by the accused to the complainant, wherein it has been clearly stated that the accused has had business transaction with the complainant on credit basis and due to that he has to pay some amounts and subsequently, discharged major amounts and only a meager amount is balance.

10. The entire argument put forth on the side of the appellant/complainant is based upon the contents of Ex.P5. In Ex.P5, it has been clearly admitted to the effect that both the accused and complainant have had a business transaction. But in Ex.P5, it has not been clearly stated that the quantum of amount mentioned in the statutory notice is correct. To put it otherwise the accused has not accepted the amount mentioned in the statutory notice.

11. At this juncture, the Court has to look into the evidence given by the complainant and he has been examined as P.W.1 and during the course of cross-examination, he has clearly admitted to the effect that he is having all accounts for the purpose of showing the amount, which is due from the accused. But to utter dismay, no accounts have been filed on the side of the appellant/complainant. It has already been pointed out that the amount quoted in the statutory notice has not been admitted in Ex.P5, reply notice. Under the said circumstances, the initial burden lies upon the complainant/appellant to prove that the amount mentioned in the cheque is due from the accused. It has already been pointed out that no accounts have been marked on the side of the appellant/complainant for the purpose of proving the amount quoted in the cheque in question. Therefore, it is needless to say that the appellant/complainant has not discharged his initial burden.

12. It is settled principle of law that as per Section 138 of the Negotiable Instruments Act, 1881, the cheque in question must be given in relation to an enforceable debt. But in the instant case, on the side of the complainant, it has not been positively established to the effect that the cheque in question has been given in connection with an enforceable debt.

13. It is true that in Ex.P5, it is stated to the effect that a blank cheque has been given to the complainant and that itself would not be sufficient to draw presumption available under Section 118 of the Negotiable Instruments Act, 1881. Even at the risk of repetition, the Court would like to point out that the initial burden lies upon the appellant/complainant remains un-discharged and therefore, the Court cannot come to a conclusion that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

14. The trial Court, after considering the lack of evidence on the side of the complainant, has rightly dismissed the complaint. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/complainant and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The order of dismissal passed in C.C.No.1442 of 2012 by the Fast Track Court - IV

Metropolitan Magistrate, George Town, Chennai, is confirmed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

msk

To

The Fast Track Court - IV
Metropolitan Magistrate, George Town, Chennai

Crl.A.No.494 of 2015

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