

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.12.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Cr1.A.No.557 of 2015

M.Vinodh Kumar

... Appellant/Complainant

Vs.

M.Saravanan

... Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378(4) of Cr.P.C. to set aside the order dated 15.5.2015 passed in STC No.187 of 2014 on the file of the Judicial Magistrate, Fast Track Court, Hosur.

For Appellant : Mr.R.Kannan

For Respondent : Mr.A.Balamurugan

JUDGMENT

The order of dismissal, dated 15.5.2015, passed in STC No.187 of 2014, by the Judicial Magistrate, Fast Track Court, Hosur, 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, on the file of the trial Court and the same has been taken on file in STC No.187 of 2014, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that during March 2014, the accused has received a sum of Rs.5,00,000/- (Rupees five lakhs) from the complainant and he has also given the cheque in question by way of putting antedate as 14.6.2014 and the same has been presented in the concerned bank, but the concerned bank has returned the same stating 'funds insufficient' and subsequently, a statutory notice dated 1.8.2014 has been issued to the accused and even after receipt of the same, he has not given any reply notice nor discharged his liability. Under the said circumstances, the present complaint has been filed for getting the relief sought therein.

4. The trial Court, after considering the divergent contentions raised on either side, has dismissed the complaint. Against the dismissal order, the present criminal appeal has been preferred, at the instance of the complainant as appellant.

5. The learned counsel appearing for the appellant/complainant has contended that after receipt of statutory notice, no reply notice has been given by the accused. Further, for the purpose of substantiating the defence put forth on the side of the accused, he has not taken any steps to stop payment of cheque. The trial Court, without considering the evidence given on the side of the appellant/complainant, has erroneously dismissed the complaint and therefore, the order of dismissal passed by the trial Court is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondent has contended that the cheque in question has been given in the name of MSM Engineering Works, whereas in the short cause title, it is mentioned as M/s.MSM Steels. On that score alone, the complaint is liable to be dismissed and further, both the complaint and accused have done construction business and even prior to March 2013, both of them have settled each other and under the said circumstances, the cheque in question is not supported by consideration nor given in respect of any enforceable debt and the trial Court, after considering the infirmities found on the side of the complainant, has rightly dismissed the complaint and therefore, the dismissal order passed by the trial Court does not require any interference.

7. The specific case put forth on the side of the complainant is that during March 2014, the accused has received a sum of Rs.5,00,000/- and on the date of receipt of debt, he has given the cheque in question by way of putting antedate as 14.6.2014 and the same has been presented in the concerned bank, but the concerned bank has returned the same stating 'funds insufficient' and subsequently, a legal notice has been issued and even after receipt of the notice, the accused has not discharged his liability.

8. On the side of the complainant, the cheque in question has been marked as Ex.P1. Ex.P1 has been given in the name of MSM Engineering Works, whereas, in the short cause title, it is mentioned that the accused is the proprietor of M/s.MSM Steels. Considering the fact that Ex.P1 has been given by MSM

Engineering Works, whereas, in the short cause title, in the complaint, it has been mentioned as indicated supra, it is needless to say that the complaint itself is not legally maintainable.

9. Even assuming without conceding that the complaint is legally maintainable, the Court has to analyse the divergent contentions put forth on either side on the basis of available evidence.

10. The complainant has been examined as P.W.1 and his specific evidence is that he and the accused have jointly done construction works and due to difference of opinion, even during March 2013, accounts have been settled.

11. Considering the evidence given by P.W.1 (complainant), the Court can easily deduce that there is no concordial relationship between the complainant and accused after March 2013. Since there is no cordial relationship between them, it is highly improper to come to a conclusion that during March 2014, the complainant has advanced a sum of Rs.5,00,000/- to the accused. Therefore, it is needless to say that Ex.P1 has not been given in connection with an enforceable debt. Since Ex.P1 has not been given in connection with an enforceable debt, the Court cannot come to a conclusion that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

12. The trial Court, after considering the technical flaw in the complaint and also after considering the divergent contentions raised on either side, has rightly dismissed the complaint. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the complainant and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The dismissal order passed in STC No.187 of 2014 is confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Judicial Magistrate, Fast Track Court,
Hosur.

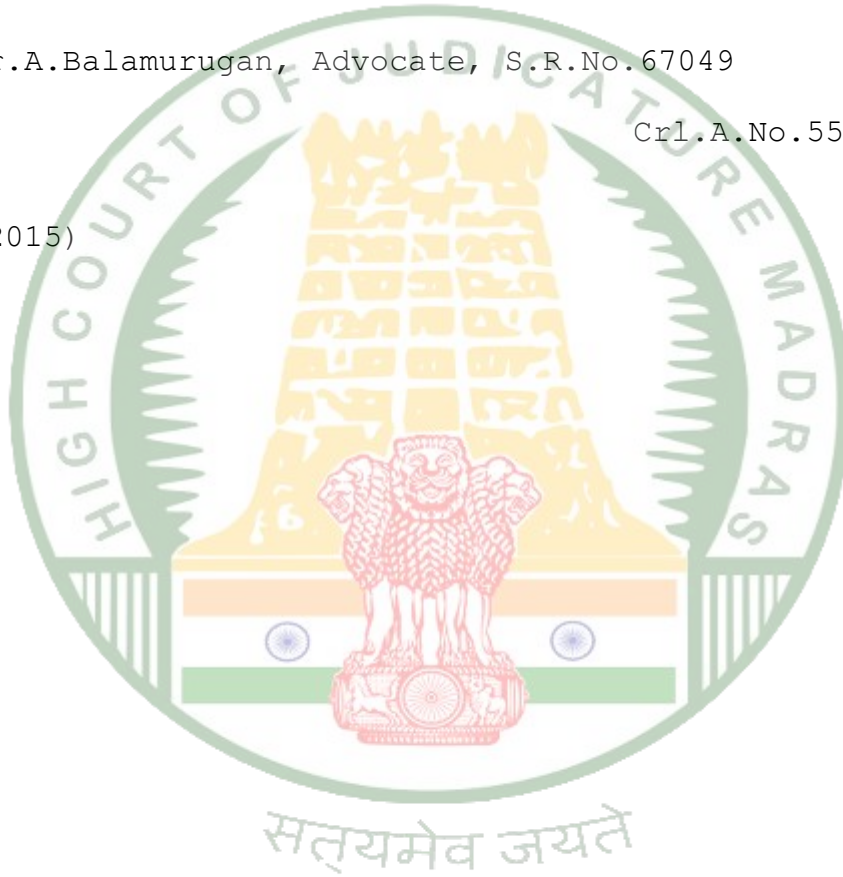
2.The Chief Judicial Magistrate,
Krishnagiri.

3.The Public Prosecutor,
High Court.

+1cc to Mr.A.Balamurugan, Advocate, S.R.No.67049

CrI.A.No.557 of 2015

GK(CO)
CA(22/12/2015)



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