IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.140 of 2007

S.V.Kumar ... Appellant/complainant

vs.

Vimala ...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973 against the judgment dated 14.12.2006 passed in C.A.No.28 of 2006, by Additional District and Sessions Judge-Fast Track Court-2, Ranipet, reversing the judgment of the learned District Munsif cum Judicial Magistrate No.1, Wallajah, in C.C.No.80 of 2005, dated 4.5.2006.

For appellant : Mr.R.Johnsathyan

For respondent : Mr.G.Jeremiah

JUDGMENT

This criminal appeal has been directed against the order of acquittal passed in Criminal Appeal No.28 of 2006 by the Additional District and Sessions Court (Fast Track Court No.II), Ranipet, wherein, the conviction and sentence passed in Calendar Case No.80 of 2005 by the District Munsif-cum-Judicial Magistrate Court No.1, Wallajah, are reversed.

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.80 of 2005, wherein the present respondent has been shown as sole accused.

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3. In the complaint it is averred that the accused has undertaken to discharge the debt incurred by one Selvam, from the complainant and to that effect, she has given two cheques for a sum of Rs.1,50,000/- and Rs.1,40,000/- in favour of the complainant and the same have been put into bank. But the concerned bank has returned the same stating 'funds insufficient' and subsequently a statutory notice has been given to the accused and even after receipt of the same, she has failed to discharge her liability and thereby 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 the accused guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced her to undergo six months simple imprisonment and also imposed a fine of Rs.10,000/-. Further, the trial Court has awarded a compensation of Rs.2,50,000/- under Section 357(3) of the Code of Criminal Procedure, 1973. Against the conviction and sentence passed by the trial Court, the accused, as appellant, has preferred Criminal Appeal No.28 of 2006 on the file of the first appellate Court.

5. The first appellate Court, after hearing arguements of both sides and upon perusing the relevant evidence, has allowed the appeal and thereby set aside the conviction and sentence passed by the trial Court and ultimately dismissed the complaint. Against the dismissal order passed by the first appellate Court, the present criminal appeal has been preferred, at the instance of the complainant, as appellant.

6. The learned counsel appearing for the appellant has raised the following points so as to set aside the order of acquittal passed in Criminal Appeal No.28 of 2006:

(a) The accused has not stated as to under what circumstances the cheques in question have been issued in favour of the appellant.

(b) The complainant has given a statutory notice and even after receipt of the same, the accused has not given any reply notice.

(c) The reasons assigned by the first appellate Court for dismissing the complaint are not proper.

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7. The learned counsel appearing for the respondent has contended that the trial Court, without considering the fact that the cheques in question have not been issued in connection with an enforceable debt, has erroneously found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881. But the first appellate Court, after evaluating the available evidence on record, has rightly found that the cheques in question have not been issued in connection with an enforceable debt and therefore, the finding given by the first appellate Court does not require any interference.

8. Based upon divergent contentions raised on either side, the Court has to analyse as to whether the cheques in question have been issued in connection with an enforceable debt?

9. The specific case of the complainant is that one Selvam is bound to pay certain amount to him and the accused has undertaken to discharge the same and in that way she has given the cheques in question.

10. For the purpose of proving the alleged liability of the said Selvam, no clinching evidence has been forthcoming. If really the said Selvam is bound to pay certain amount to the complainant and the accused has undertaken to discharge the same and due to that she has given the cheques in question, definitely, for the purpose of proving the alleged liability of the said Selvam, the complainant could have examined him. But as stated earlier, on the side of the complainant, the said Selvam has not been examined. Therefore, on the side of the complainant, the alleged transaction in between the complainant and the said Selvam has not been established. Even assuming without conceding that the cheques in question have been issued in favour of the complainant, mere issuance of cheques is not at all sufficient for coming to a conclusion that the same have been given in respect of an enforceable debt.

11. In the instant case, the initial burden lies upon the complainant. But he has not discharged the same. Since the initial burden lies upon the complainant has not been discharged, the Court cannot automatically draw the presumption available under Section 118 of the Negotiable Instruments Act, 1881. It is true that a statutory notice has been given to the accused and the same has been received by her. But she has not given any reply notice and the same would not pave the way for coming to a conclusion that the cheques in question have been issued in relation to an enforceable debt. Since the cheques in question have not been issued in respect of 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, without considering the initial burden lies upon the complainant, has simply awarded conviction and sentence against the accused. But the appellate Court, after reappraising the evidence properly, has rightly found that the appellant/complainant has not established the alleged fact that there is a transaction in between him and the said Selvam and further, the first appellate Court has rightly held that the cheques in question have not been issued in respect of an enforceable debt. Therefore, viewing from any angle, the reasons assigned by the first appellate Court are perfectly correct and the same cannot be interfered with.

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In fine, this criminal appeal is dismissed. The order of acquittal passed in Crl.A.No.28 of 2006, by the Additional District and Sessions Court (Fast Track Court No.II), Ranipet, is confirmed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

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To
1. The Additional District and Sessions Judge, (FTC No.II), Ranipet.

2. The Principal Sessions Judge, Vellore.

3. The District Munsif Cum Judicial Magistrate No.I, Wallajah.

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