

-IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.162 of 2007

G.Venkatraman

.. Appellant/Complainant

Vs.

N.Pappannan

.. Respondent/Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 7.8.2006 in C.C.No.346 of 2005 on the file of Judicial Magistrate No.1, Coimbatore.

For appellant : Mr.N.S.Sivakumar

For Respondent : Mr.V.Ashokkumar for
Mr.Su.Srinivasan

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal dated 7.8.2006 passed in Calendar Case No.346 of 2005 by the Judicial Magistrate Court No.1, Coimbatore.

2. The appellant herein, as complainant, has filed the complaint in question under section 138 of Negotiable Instruments Act, 1881, wherein the present respondent has been shown as sole accused.

3. It is averred in the complaint that the complainant, accused and one Mohan have run a partnership business under the name and style of 'Micro Engineering' from the year 1984. On 31.12.2003, the same has been dissolved and the entire business has been taken over by the complainant and at the time of dissolution, the accused has to pay a sum of Rs.60,000/- to the complainant and in order to discharge the same, on 15.7.2004, the accused has given a cheque in favour of the complainant and the same has been put into the concerned bank and the concerned

bank has returned the same stating "funds insufficient" and subsequently, a statutory notice has been issued and after receipt of the same, the accused has given a false reply notice. Under the said circumstances, he has committed an offence punishable under section 138 of Negotiable Instruments Act.

4. The trial court, after considering the available evidence on record, 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 order of acquittal, present Criminal Appeal has been preferred at the instance of the complainant as appellant.

5. The learned counsel appearing for the appellant/complainant has repeatedly contended that at the time of dissolution of partnership firm, the accused is bound to pay a sum of Rs.60,000/- to the complainant and in order to discharge the same, cheque in question has been given 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 has been issued to the accused and even after receipt of the same, the accused has not discharged the liability and thereby committed an offence punishable under section 138 of Negotiable Instruments Act and further, the trial court has believed Ex.D.4, but, Ex.D.4 has been given at a later point of time and the same cannot be looked into and therefore, the approach made by the trial court is erroneous and the respondent/accused has to be mulcted with liability under section 138 of Negotiable Instruments Act.

6. Per contra, learned counsel appearing for the respondent/accused has contended that on 13.5.2004, the appellant/complainant has given an undertaking affidavit and the same has been marked as Ex.D.4, wherein it is stated that he received all the amounts due to him and further, the cheque in question has been given as a security and by way of utilising the same, present complaint has been filed. The trial court, after considering the available evidence on record, has rightly found that the cheque in question is not supported by consideration and therefore, the dismissal order passed by the trial court need not be set aside.

7. On the basis of the divergent contentions put forth on either side, the Court has to analyze as to whether the cheque in question has been given in connection with an enforceable

debt.

8. The specific case put forth on the side of the complainant is that on 15.7.2004, for the purpose of discharging liability, the accused has given the cheque in question for a sum of Rs.60,000/- in favour of the complainant. The cheque in question has been marked as Ex.P.3 and reply notice sent by the accused to the complainant has been marked as Ex.P.7.

9. In Ex.P.7, it has been clearly admitted to the effect that the complainant, accused and one Mohan have run a partnership business under the name and style of 'Micro Engineering' and subsequently the said Mohan has passed away and thereafter the erstwhile partnership firm has become dissolved and at the time of dissolution of partnership firm, the complainant has given an undertaking affidavit, wherein he has admitted to the effect that he received all the amounts due to him and further, in Ex.P.7, it has been stated that the cheque in question has been given as a security.

10. At this juncture, the Court has to look into the evidence adduced by the complainant coupled with Ex.D.4. In fact, this Court has perused the entire evidence given by the complainant, who has been examined as P.W.1 and his specific evidence is that the accused is bound to pay a sum of Rs.60,000/- to the complainant. The said fact has not been mentioned in the complaint. The specific contention put forth in the complaint is that only with regard to dissolution of partnership firm, a sum of Rs.60,000/- is due from the accused and in order to discharge the same, the cheque in question has been given on 15.7.2004, but the complainant (P.W.1) has given evidence otherwise.

11. The specific contention put forth on the side of the respondent/accused is that with regard to all the amounts due to the complainant, he has executed an affidavit and the same has been marked as Ex.D.4. In Ex.D.4, it has been clearly mentioned that the complainant has received all the amounts due to him. Further, Ex.D.4 has been marked only through the complainant (P.W.1). It is an admitted fact that both the complainant and the accused have run the partnership business and subsequently, the same has been dissolved. Since the complainant himself has admitted Ex.D.4, wherein it has been clearly mentioned that he has received all the amounts, question of paying a sum of Rs.60,000/- with regard to partnership firm from the accused does not arise. Further, as pointed out earlier, the specific

evidence given by P.W.1 is that the accused is personally liable to pay a sum of Rs.60,000/-. Therefore, the complainant himself has given a clear go-by to his specific case put forth in the complaint.

12. It is a settled principle of law that as per Section 118 of Negotiable Instruments Act, 1881, a presumption can be drawn, but at the same time, the presumption available therein is a rebuttal. In the instant case, since Ex.D.4 has been marked only through the complainant (P.W.1), wherein it has been clearly admitted that he received all the amounts in connection with partnership firm, the Court can easily come to a conclusion that the cheque in question is not supported by consideration. Since the cheque in question is not supported by consideration, the same cannot be given with regard to an enforceable debt. Since the cheque in question has not been given in respect of an enforceable debt, the accused cannot be mulcted with liability under section 138 of Negotiable Instruments Act.

13. The trial Court, after considering the available evidence on record, has rightly found that the accused has not committed an offence punishable under section 138 of Negotiable Instruments Act. In view of the discussions made earlier, this Court has not found any force in the contentions 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 acquittal dated 7.8.2006 passed in Calendar Case No.346 of 2005 by the Judicial Magistrate No.1, Coimbatore is confirmed.

Sd/-

Assistant Registrar

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To :

1. Judicial Magistrate No.1, Coimbatore.

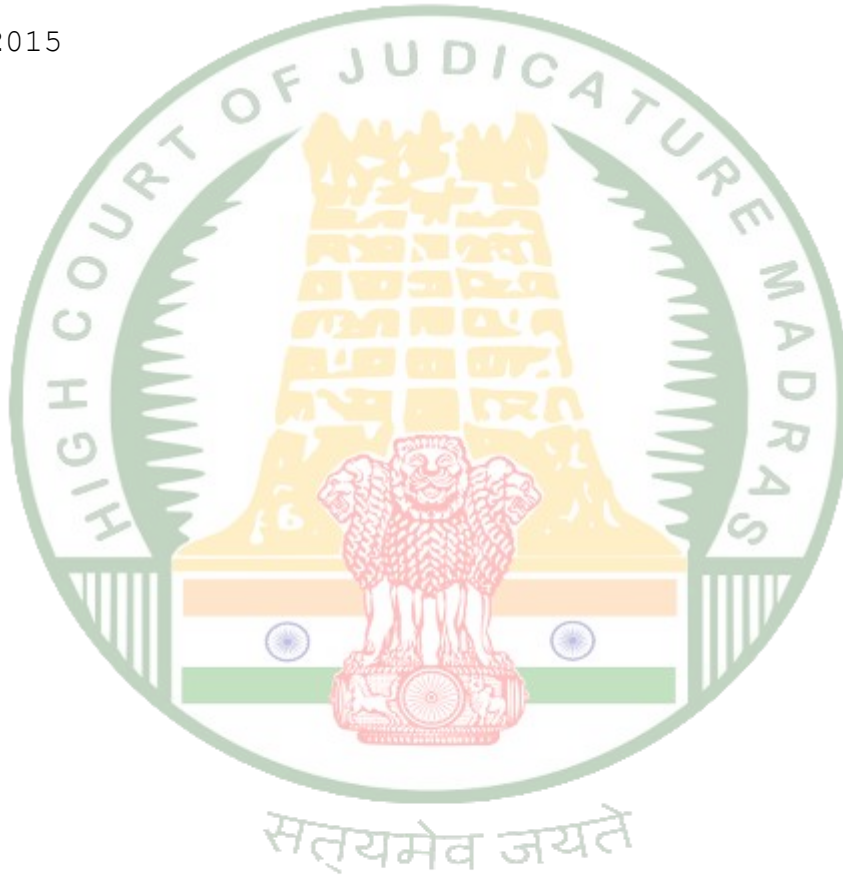
2. The Public Prosecutor
High Court, Madras

+1cc to Mrs.Vanathi srinivasan, Advocate Sr.58174

+1cc to Mr.N.S.sivakumar, Advocate SR.58083

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