

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.236 of 2007

A.L. Abul Kalam Azad

...Appellant/Complainant

Vs.

T. Rathinakumar
Sri Sumangal Agencies
Real Estates and Builders
19, St. Lukes Complex
Medical College Road
Tanjore

...Respondent/Accused

Criminal Appeal under Section 374(2) of Cr.P.C., against the judgment of acquittal in C.C.No.261 of 2005 on the file of the Judicial Magistrate, Perambalur dated 04-11-2006

For Appellant : Mr. Sarath Chandran
for Mr. V. Raghavachari

For Respondent : Mr. Santhanagopalan
for Mr.M.R. Sivakumar

JUDGMENT

The order of acquittal dated 04-11-2006, passed in C.C.No.261 of 2005 by the Judicial Magistrate, Perambalur is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed the complaint in question, under Section 138 read with 142 of the Negotiable Instruments Act, 1881, wherein the present respondent has been shown as sole accused.

3. The material averments made in the complaint are that the complainant is the Managing Trustee of Indian Educational Trust. The accused has been doing real estate business. In the course of his business, the accused is liable to pay a sum of Rs.2,75,000/- (Rupees Two lakhs seventy five thousand only). For discharging the

said amount the accused has given the cheque in question, and its number is 981673. The same has been presented in the concerned bank and the concerned bank has returned the same stating 'funds insufficient'. In spite of assurance given by the accused to the complainant, he failed to make sufficient arrangement of funds in his account. The complainant has issued a legal notice to the accused, and received by him on 03-10-2004. Evenafter receipt of said notice, he failed to discharge his liability. Under the said circumstances, he committed an offence punishable under Section 138 read with 142 of the Negotiable Instruments Act, 1881and therefore, the present complaint has been filed.

4. The Trial Court after evaluating the available evidence on record has dismissed the complaint and thereby, acquitted the accused. Against the order of acquittal, 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 repeatedly contended that the cheque, in question, has been issued to the Indian Educational Trust, wherein the complainant has been acting as Managing Trustee. Under the said circumstances, the present complaint has been filed. But the Trial Court without considering the evidence available on record, has erroneously dismissed the complaint and therefore, the dismissal order passed by the Trial Court is liable to be set aside and the accused is liable to be punished in accordance with law.

6. The learned counsel appearing for the respondent/accused has also equally contended that in the instant case on the side of the appellant/complainant, no acceptable and trustworthy evidence is available for the purpose of proving that the cheque, in question, has been given either to the Trust mentioned in the complaint or to the present complainant and since there is no nexus in between the complainant and accused and since on the side of the appellant/complainant, it has not been proved to the effect that the cheque, in question, has been given in respect of an enforceable debt, the Trial Court has rightly dismissed the complaint and therefore, the dismissal order passed by the Trial Court does not require any interference.

7. The learned counsel appearing for the appellant/complainant has accited the following decisions:

(i) 1998 (2) Allahabad (Cri) 792 = 1999 Cri LJ 1349 (Devendra Vs. Ram Gopal Rai and anr.) wherein the High Court of Allahabad has held as follows:

"No requirement of law that cheque to be issued to that person from whom liability incurred. "

(ii) In 2002 (3) ACR 2519 (SC) (I.C.D.S. Ltd., Vs. Beena Shabeer and anr.) wherein it is held that cheque issued by wife as

guarantor towards debt liability of husband can be enforced under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

(iii) In 2004 (2) SCC 235 (Goa Plast (P) Ltd., Vs. Chico Ursula D'Souza), it is held that relationship between parties concerned was not at all a factor germane to the proceedings under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

(iv) In 2015 (2) MLJ (Cr1) 304 (Soorya Weavers Vs. J.P. Anthony Raj) wherein this Court has held that evidence of complainant disclose that the complainant/ Spprua Weavers as well as Sun apparels are sister concerns; partners of both the firms are one and the same and both of them are engaging same line of business; under the said circumstances, cheque issued in favour of one firm can be utilised by other firm and as such, legally enforceable debt.

(v) In 1994 (38) MLJ 360 = 1995 83 CompCas 245 Mad (Dickson Prem Raj Vs. R. Manoharan), this Court held that cheque must be issued for discharge in whole or in part of any debt or other liability.

8. From a cumulative reading of the decisions mentioned supra, the Court can deduce the following points:

(a) The cheque in question must be given in respect of an enforceable debt.

(b) If a cheque is given by wife, who stands as a guarantor for the debt incurred by her husband, the same can be enforced.

(c) The relationship between the parties is not at all a factor germane to the proceedings under Section 138 read with 142 of the Negotiable Instruments Act, 1881.

With these legal backdrops, the Court has to analyse as to whether the appellant/complainant has established the crucial fact that the cheque, in question, has been given by the respondent/accused in respect of an enforceable debt.

9. In the complaint in Paragraph No.1 it is stated like this:

"The complainant is Operation Manager and Managing Trustee of Indian Educational Trust. The respondent doing real estate business. In the course of business respondent is liable to pay 2,75,000/- (Rupees two lakhs and seventy five thousand) for the amount respondent issued cheque. The cheque bearing No.981673 and it was presented into Bank and the same was returned as insufficient of funds".

10. A careful reading of Paragraph No.1 of the complaint would go to show that there is no mention as to whom the accused is liable to pay the said amount or to whom the cheque, in question has been given. It is not an adulation to say that the complaint

filed on the side of the appellant/complainant is totally bereft of necessary particulars. To put it in short, the complaint does not speak about the alleged transaction in between the respondent/accused and the Trust mentioned in the complaint. Therefore, it is needless to say that the complaint, in question is liable to be jettisoned simply on the ground of want of necessary particulars.

11. Now, the Court has to further analyze the case of the appellant/complainant on the basis of evidence adduced by him. The appellant/complainant has been examined as P.W.1 and his specific evidence during the course of cross-examination is that the Trust mentioned in the complaint is bound to pay some amount to him and due to that, the cheque, in question has been given to him.

12. It is pertinent to point out that no mention has been made as to whom the respondent/accused is liable to pay the amount mentioned in the complaint. Further, in the complaint no mention has been made as to in whose favour the cheque, in question, has been issued by the respondent/accused. Since the above particulars are lacking in the complaint, the Court cannot accept the aforesaid oral evidence given by the complainant.

13. Even assuming without conceding that the Trust mentioned in the complaint is bound to pay certain amount to the appellant/complainant and only for discharging the same, the cheque has been given to him, the Court has to analyze as to whether such factual aspects can be accepted. It is a well-known principle of law that every made over must be in writing and also signed by both parties. In the instant case, except the ipse dixit of the complainant, no documentary evidence has been forthcoming. Under the said circumstances, the Court can very well come to a conclusion that the aforesaid evidence adduced by the appellant/complainant cannot be accepted. The appellant/complainant has further deposed to the effect that he has not seen the respondent/accused at any point of time and there is no connection in between them. Therefore, it is very clear that there is no nexus in between the appellant/complainant and respondent/accused. Even as per the dictum given by the Honourable Supreme Court, relationship of the parties is immaterial. Simply because the appellant/complainant has filed the complaint in question, the Court cannot automatically come to a conclusion that the cheque, in question had been given in respect of an enforceable debt.

14. It has already been pointed out that the appellant/complainant has failed to mention in the complaint as to whom the respondent/accused has to repay the amount and further, in whose favour the cheque, in question has been given. Furthermore, the alleged made over has not at all been established. Since the

above factual aspects have not been established on the side of the appellant/complainant, it is needless to say that the appellant/complainant has failed to establish that the respondent/accused has committed the offence punishable under the Sections mentioned supra. The Trial Court after considering the overall evidence available on record has rightly come to the conclusion that the respondent/accused has not committed an offence punishable under the Sections. In view of the foregoing enunciation of factual as well as legal premise, this Court has not found any acceptable force in the contentions putforth on the side of the appellant/accused and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The judgment of acquittal passed in C.C.No.261 of 2005 dated 04-11-2006 by the Judicial Magistrate, Perambalur is confirmed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Judicial Magistrate,
Perambalur.

2. -Do- Through The Chief Judicial Magistrate,
Perambalur.

1 CC to Mr. V. Raghavachari, Advocate SR.No. 49495

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Criminal Appeal No.236 of 2007

TEJ (CO)

PSI (29.09.2015)