

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.181 of 2006

S.R.Selvakumar

... Appellant/Complainant

vs.

R.Kumarasamy

...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973 against the judgment dated 05.12.2005 passed in C.C.No.805 of 2004 by Judicial Magistrate No.2, Nagapattinam.

For appellant : Mr.R.Arumugam

For respondent : No appearance

JUDGMENT

The order of acquittal passed in C.C.No.805 of 2004 by the Judicial Magistrate No.2, Nagapattinam, is being challenged in the present criminal appeal.

2. The appellant herein as complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, wherein, the present respondent has been shown as sole respondent/accused.

3. It is averred in the complaint that on 19.01.2004, the respondent/accused has received a sum of Rs.25,000/- from the complainant and for discharging the same, he has given two cheques on the same day; one is for Rs.15,000/- and another for Rs.10,000/- and the same have been put into Bank for collection; 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 same, the respondent/accused has not discharged the liability and therefore, he has committed an offence punishable under Section 138 of the Negotiable Instruments Act and under the said circumstances, the present complaint has been filed.

4. The court below, after pondering the available evidence on record has dismissed the complaint by way of holding that the statutory notice given by the complainant is barred by limitation and ultimately, acquitted the respondent/accused. Against the order of acquittal, the present criminal appeal has been preferred at the instance of the complainant as appellant.

5. Even though this Criminal Appeal has been posted twice for hearing arguments, the learned counsel appearing for the respondent/accused has not made his appearance. Under the said circumstances, this criminal appeal is disposed of on merits on the basis of the contention put forth on the side of the appellant/complainant.

6. The learned counsel appearing for the appellant/complainant has meticulously contended that the cheques in question have been issued on 19.01.2004 in the name of the complainant by the accused and the same have been put into Bank for collection, but the Bank has returned the same stating "funds insufficient" and subsequently, statutory notice has been given on 17.02.2004 and further, the intimation sent by Bank has reached the petitioner on 24.01.2004; under the said circumstances, the legal notice issued by the complainant is perfectly well within the period of limitation, but the court below without considering the available record has erroneously dismissed the complaint and therefore, the dismissal order passed by the court below is liable to be set aside.

7. For considering the submission made on the side of the appellant/complainant, the court has to look into the following documents:-

- (i) Exs.P.1 and 2 are the cheques dated 19.01.2004 alleged to have been drawn by the accused in favour of the complainant;
- (ii) Ex.P.4 is an intimation given by Union Bank;
- (iii) Ex.P.5 is a copy of notice sent by the complainant to the accused;
- (iv) Ex.P.6 is a reply notice dated 03.03.2004 given by the accused.

In Ex.P.3, it has been clearly mentioned that on 17.02.2004, the complainant has given the concerned notice.

8. Even assuming without conceding that the concerned Bank has given intimation on 20.01.2004, since Ex.P.5 has come into existence on 17.02.2004, it is very clear that Ex.P.5 has been given well within the time.

9. The court below has simply come to a conclusion that statutory notice has not been given by the complainant within the stipulated period; but on the basis of documents filed on the side of the complainant, especially the date mentioned in Ex.P.6, reply notice, it is needless to state that the finding arrived at by the court below with regard to limitation is not correct.

10. In the order passed by the court below, in one place, it is observed that Ex.P.6 has not been given by the accused. In fact, this court has perused the entire averments made in Ex.P.6, wherein, it has been specifically stated to the effect that the notice dated 17.02.2004 sent by the complainant has reached the accused.

11. Further, it is stated that one Murugesan, who is none other than the brother of the accused has received money from the complainant by way of debt and for the purpose of giving security, the cheques in question have been given by the accused. Therefore, it is quite clear that the court below has not properly appreciated nor looked into the documents filed on the side of the complainant and therefore, the reasons assigned by the court below for dismissing the complaint are totally improper and under the said circumstances, the order of dismissal passed by the court below is liable to be set aside and the matter is liable to be remitted to the file of the court below.

In fine, this Criminal Appeal is allowed and the order dated 05.12.2005 passed in C.C.No.805 of 2004 by the Judicial Magistrate, No.2, Nagapattinam is set aside and C.C.No.805 of 2004 is remanded to the file of the court below and the court below is directed to look into the documentary evidence as well as oral evidence adduced on the side of the appellant/complainant properly and pass suitable orders within 3 months from the date of receipt of records and also directed to report the same to the Registry without fail.

The Registry is strictly directed to send all the records forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Judicial Magistrate No.2, Nagapattinam.
2. -do- Through The Chief Judicial Magistrate, Nagapattinam.

copy to: The Section Officer,
Crl. Section, High Court, Madras.

+ 1 cc to Mr.R. Arumugham, Advocate Sr.44254

Crl.A.No.181 of 2006

RJ(CO)
Eu 07.09.15