IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2015
Delivered on : 30.10.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal Nos.387, 388 and 389 of 2007

P.Vadivel ... Appellant in all the above Criminal Appeals/Complainant

Vs.

1.R.Maruthachalam

2.Balwinder SinghBasara ... Respondents 1 & 2 in Crl.A.387/2007/4th & 5th Accused

3.S.R.P.Steel, a Partnership Firm
Having its registered office at
No.570, Thottian Thottam
Kathiranaickenpalayam
K.Vadamadurai, Coimbatore

4.P.Ayyasamy ... Respondents 1 & 2 in Crl.A.388/2007/1st & 2nd Accused

5.V.Balasundaram ... Respondent in Crl.A.389/2007/ 3rd Accused

Criminal Appeals filed under Section 378 of Cr.P.C., against the judgment dated 26.10.2005 passed by the Additional District Sessions Judge, II Fast Track Court,Coimbatore in Criminal Appeal Nos.357, 356 & 360/2005 against the Order passed in C.C.No.1000 of 2002 dated 02.12.2005 on the file of Judicial Magistrate II, Coimbatore.

For appellant : Dr.P.Vasudevan

For respondent : No appearance for R1 in Crl.A.Nos.387 & 388/2007
Mr.N.Anand Venkatesh for R2 in Crl.A.387/2007
Mr.Devaraj for sole respondent in Crl.A.389/2007
Mr.V.Ayyadurai for R2 in Crl.A.388/2007

COMMON JUDGMENT

These Criminal Appeals have been directed against the common judgment passed in Criminal Appeal Nos.356, 357 and 360 of 2005 by the Additional District and Sessions Judge [Fast Track Court-II], Coimbatore, wherein, the conviction and sentence passed in Calendar Case No.1000 of 2002 by the Judicial Magistrate-I, Coimbatore are reversed.

2. The appellant herein as complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 and the same has been taken on file in Calendar Case No.1000 of 2002, wherein, the present respondents have been shown as accused.

3. It is averred in the complaint that the first accused is a partnership firm, having a business of manufacturing and dealing in Steel and Hardware Items. The accused 2 to 5 are working partners of the 1st accused. On 17.09.2000, the accused 2 and 3, on behalf of the first accused have borrowed a sum of Rs.2,00,000/- from the complainant by way of debt and executed a promissory note. The remaining accused have acknowledged the debt incurred by the accused 2 and 3 on behalf of the 1st accused by way of executing separate document. The accused 2 and 3 have issued a cheque on 26.06.2002 in favour of the complainant for a sum of Rs.2,00,000/- and the same has been put into Bank on 28.06.2002. The concerned Bank has returned the same stating "funds insufficient". On 05.07.2002, the complainant has issued a legal notice to the accused and all the accused have received the same. Even after receipt of statutory notice, the accused have not discharged their liability and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act.

4. The trial court, after considering the available evidence on record has found the first accused guilty under Section 141 of the Negotiable Instruments Act, 1881 and found the remaining accused guilty under Section 138 of the said Act and sentenced them to undergo 6 months simple imprisonment and also imposed a fine of Rs.5,000/- upon each of them with usual default clause. Against the conviction and sentence passed by the trial court, the 4th accused has preferred Criminal Appeal No.357 of 2005, accused 1 and 2 have preferred Criminal Appeal No.356 of 2005 and 3rd accused has preferred Criminal Appeal No.360 of 2005 on the file of the First Appellate Court.

5. The First Appellate Court, after hearing arguments of both sides and upon reappraising the evidence available on record has allowed all the criminal appeals, whereby set aside the conviction and sentence passed by the trial court and ultimately acquitted all the accused by way of passing a common judgment. Against the common judgment passed by the First Appellate Court, these Criminal Appeals have been preferred at the instance of the complainant as appellant.

6. The learned counsel appearing for the appellant/complainant has contended that the 1st accused is a partnership firm and the remaining accused are its working partners. On 17.09.2000, the accused 2 and 3, on behalf of the first accused has received a sum of Rs.2,00,000/- from the complainant and thereby executed a promissory note. The remaining accused have also acknowledged the debt by way of executing a separate deed and in order to discharge their liability on 26.06.2002, the accused 1 and 2 have issued the cheque in question in favour of the complainant and the same has been put into concerned Bank and the concerned Bank has returned the same stating "funds insufficient" and subsequently a separate notice has been given to all the accused and even after receipt of the same, they failed to discharge their liability, but, they have issued a false reply notice. Under the said circumstances, the accused have committed an offence punishable under Section 138 of the Negotiable Instruments Act. The trial court, after considering the available evidence on record has rightly found the first accused guilty under Section 141 of the said Act and the remaining accused were found guilty under Section 138 of the said Act. The First Appellate Court, without considering the available evidence on record has erroneously found that the accused are not guilty of the offences mentioned

supra and ultimately acquitted them and therefore, the common judgment passed by the First Appellate Court is liable to be set aside and the conviction and sentence passed by the trial court are liable to be restored.

7. Per contra, the learned counsel appearing for the respondents has also equally contended that the accused have not known the complainant. The first accused has had money dealings with one Priya Mangala Finance and subsequently, the first accused has become defunct and at the time of receipt of loan, a blank cheque and also a blank stamp paper have been given as security in favour of the said Finance and by utilising the same, the present complaint has been filed. In fact, on the side of the accused, necessary document has been filed for the purpose of showing that the cheque in question has not been given in connection with an enforceable debt and the trial court, without considering the nature of defence put forth on the side of the accused has erroneously found them guilty under Section 141 and 138 of the Negotiable Instruments Act, 1881. But the First Appellate Court, after contemplating the available evidence on record has rightly found that all the accused are not guilty under the said sections and therefore, judgments passed by the First Appellate Court does not require any interference.

8. Before analysing the rival submissions made on either side, the court has to look into the presumption available under the Negotiable Instruments Act, 1881. It is an admitted fact that a presumption can be drawn in favour of the complainant with regard to execution and passing of consideration provided the said presumption is rebutttable one.

9. With these legal backdrops, the court has to analyse as to whether cheque in question has been given in connection with an enforceable debt.

10. The specific defence put forth on the side of the accused is that the first accused has had money dealings with one Priyamangala Finance and at the time of receipt of loan as a security, a blank cheque and a blank stamp paper have been given in favour of the said Finance and the accused have had no connection whatsoever with the complainant and by utilising the blank cheque as well as the blank stamp paper, the present proceeding has been instituted.

11. On the side of the complainant, pronote dated 17.09.2001 has been marked as Ex.P.1. The concerned cheque dated 26.06.2002 has been marked as Ex.P.2 and a letter alleged to have been executed by some of the accused on 15.12.2000 has been marked as Ex.P.3.

12. The complainant has been examined as P.W.1. During the course of chief examination, he has given evidence in consonance with the averments made in the complaint. But during the course of cross-examination, he has clearly admitted to the effect that his monthly emolument is only Rs.3000/-.

13. On the side of the accused, a limb of argument has been advanced to the effect that the complainant has had no wherewithal, so as to advance a sum of Rs.2,00,000/-. Considering the evidence given by the complainant to the effect that his monthly emolument is only Rs.3000/- and also after considering that he has not filed any document for the purpose of showing that he is having source to advance a sum of Rs.2,00,000/-, it is needless to say that he has had no sufficient means to advance a sum of Rs.2,00,000/- to the accused.

14. Now, the court has to look into the documents filed on the side of the complainant. As pointed out earlier, the Pro note dated 17.09.2000 has been marked as Ex.P.1 and the cheque in question has been marked as Ex.P.2. Likewise, the acknowledgement letter dated 15.12.2000 has been marked as Ex.P.3. In Exhibits P.1 and P.2, Nos.19 are available. If really a money transaction has taken place in between the complainant and accused in the year 2000, definitely, the accused would have executed a Pro note which has come into existence in the year 2000 and likewise, definitely, they would have given a cheque, which has come into existence in the said year. Likewise, Ex.P.3 has come into existence on 15.12.2000, but stamp paper has been purchased on 13.12.1999. Even from a cursory look on Exhibits P.1 to P.3, the court can very well come to a conclusion that Exs.P.1 to P.33 are nothing but concocted documents.

15. It is seen from Ex.P.2 that some witnesses are available with regard to its execution. If really accused 2 and 3 have jointly executed Ex.P.2, definitely, the complainant would have examined the witnesses found therein. But he has not examined any of them.

16. It has already been pointed out that the complainant is not having sufficient means so as to advance a huge sum of Rs.2,00,000/- by way of debt to the accused. Further Exs.P.1 to P.3 have come into existence in the year 1999. Further Exs.P.1 and 12, No.19 are available. Therefore, it seems that those documents are related to in the year 1990. Further Ex.P.3 has been purchased in the year 1999. Therefore, it is quite clear that the cheque in question has not been given in connection with an enforceable debt.

17. It has already been pointed out that if really in the year 2000, the accused 2 and 3 on behalf of the 1st accused have received a sum of Rs.2,00,000/- from the complainant, all the relevant documents would have emerged only in the year 2000. But as stated in many places, Nos.19 are available in Ex.P.1 and P.2 and that itself would be sufficient for coming to a conclusion that the contentions put forth on the side of the accused is really having subsisting force.

18. The trial court, without properly analysing the documents filed on the side of the complainant as well as his evidence, has erroneously found all the accused guilty under Sections mentioned supra. But the First Appellate Court, after reappraising evidence available on record has rightly found that the cheque in question has not been issued in connection with an enforceable debt.

19. In view of the foregoing elucidation of both factual and legal premise, this court has not found any infirmity nor illegality in the common judgment passed by the First Appellate Court and therefore, the present Criminal Appeals deserve to be dismissed.

In fine, these Criminal Appeals are dismissed. The common judgment passed in Criminal Appeal Nos.357, 356 and 360 of 2005 by the Additional District and Sessions Court [Fast Track Court-II], Coimbatore is confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District Sessions Judge,
   II Fast Track Court, Coimbatore.

2. The Judicial Magistrate-I,
   Coimbatore.

3. Through The Chief Judicial Magistrate,
   Coimbatore.

+1cc to Mr.Devaraj, Advocate, S.R.No.59132
+1cc to Mr.N.Anand Venkatesh, Advocate, S.R.No.59215

Crl.A.Nos.387 to 389 of 2007

SR(CO)
CA(27/11/2015)