

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.472 of 2007

P.Vadivel

... Petitioner

vs.

1.K.Aruna

2.K.Kirubakaran

...Respondents

Criminal Revision Case filed under Section 378(1) of Criminal Procedure Code against the order dated 09.04.2007 in C.C.No.258 of 2004 on the file of Judicial Magistrate No.I, Salem.

For Petitioner : Mr.Selvaraj

For Respondents : Mr.A.Thiyagarajan

JUDGMENT

This Criminal Appeal has been directed against the order dated 09.04.2007 passed in C.C.No.258 of 2004 by the Judicial Magistrate No.1, Salem.

2. The appellant herein as complainant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, wherein, the present respondents have been shown as accused.

3. It is averred in the petition that on 13.03.2003, both the accused have received a sum of Rs.4,50,000/- by way of debt from the complainant and to that effect, they executed a Pronote. On 17.11.2003, the total amount comes to Rs.4,86,000/-. In order to discharge their liability, they have issued a cheque for a sum of Rs.4,50,000/- to be drawn in favour of ICICI Bank, Chevapettai and the same has been presented, but it has been returned as "funds insufficient" and subsequently on 21.11.2003, a legal notice has been issued to the accused, but the same has been returned as "unserved". Since the accused have committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the present complaint has been filed for getting the relief sought for therein.

4. The court below, after considering the available evidence on record has dismissed the complaint and thereby, acquitted both 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 contended that the trial court has failed to look into the evidence adduced on the side of the complainant and also adduced by D.W.1. The specific evidence given by D.W.1-Ramasamy, the Manager of P.S.K.Finance, is that the complainant has repaid a part of the amount received by him as loan and therefore, the complainant has sufficient means to lend money to the accused and under the said circumstances, the order of acquittal passed by the trial court is totally erroneous and the same is liable to be set aside.

6. In order to controvert the contentions put forth on the side of the appellant/complainant, the learned counsel appearing for the respondents/accused has contended that the complainant has been examined as P.W.1 and during the course of cross-examination, he specifically admitted to the fact that he does not know about the father name of the second accused and further on the side of the accused, it has been clearly established, that the complainant has borrowed a loan of Rs.10,000/- from P.S.K.Finance and the same has not been discharged in full and under the said circumstances, he has no sufficient means to lend loan to others and therefore, the cheque in question is not supported by consideration and further the first accused received a loan from P.S.K.Finance and at the time of receiving loan he put his signature on the blank cheque and by utilising the same, the present proceeding has been initiated and the trial court, after considering the overall evidence available on record has rightly come to the conclusion that the cheque in question is not supported by consideration and therefore, dismissal order passed by the trial court is legally correct and the same does not call for any interference.

7. It is an admitted fact that the present complaint has been filed under Section 138 of the Negotiable Instruments Act, 1881. For invoking Section 138 of the said Act, the cheque in question must be given in respect of an enforceable debt.

8. In the instant case, a specific defence taken on the side of the accused is that the cheque in question is not supported by consideration and further the appellant/complainant has no sufficient means to advance loan of Rs.4,50,000/- to the accused.

9. At this juncture, it would be condign to look into the evidence adduced by the complainant. The complainant has been examined as P.W.1 and his specific evidence during the course of cross examination is that he has not known the father name of the 2nd accused. If really the complainant advanced a huge sum of Rs.4,50,000/- by way of getting Pronote, definitely, he would have known or enquired the father name of the second accused. Since he has given such kind of specific evidence, the court can easily come to a conclusion that the alleged money transaction put forth by the complainant is nothing but farce.

10. On the side of the accused, the Manager of P.S.K.Finance has been examined as D.W.1 and his specific evidence is that the appellant/complainant has received a sum of Rs.10,000/- by way of debt from the said Finance and he discharged a part of the loan.

11. Since the appellant/accused has received a loan from the said Finance and partly discharged, the court can easily come to a conclusion that he has no sufficient means to advance loan to others.

12. The cheque in question has been marked as Ex.P.1. The specific contention put forth on the side of the appellant/complainant is that the accused have received a said sum of Rs.4,50,000/- by way of executing Pronote, but for the scrutiny of the court, the same has not been marked.

13. Since on the side of the appellant/complainant, it has not been positively established that he has had sufficient means for advancing loan on the date of issuance of the alleged cheque and since on the side of the respondents/accused, it has been established to the fact that the appellant/complainant has received loans from P.S.K.Finance and partly discharged, this Court is of the considered view that Ex.P.1 has not been given in respect of an enforceable debt and therefore, Section 138 of the Negotiable Instruments Act, 1881 is not attracted.

14. Further, the presumption available under Section 118 of the Negotiable Instruments Act, 1881 is nothing but rebuttable and in the present case, on the side of the respondents/accused replete rebuttal evidence is available so as to disprove the case of the appellant/complainant.

15. The trial court, after considering the available evidence on record has rightly dismissed the complaint.

16. In view of the discussions made earlier, this Court has not found any acceptable force in the arguments made on the side of the appellant/complainant and ultimately this appeal deserves to be dismissed.

In fine, the Criminal Appeal is dismissed. The order of acquittal passed in C.C.No.258 of 2004 dated 09.04.2007 is confirmed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

nvsri

To :

1.The Judicial Magistrate No.I, Salem.

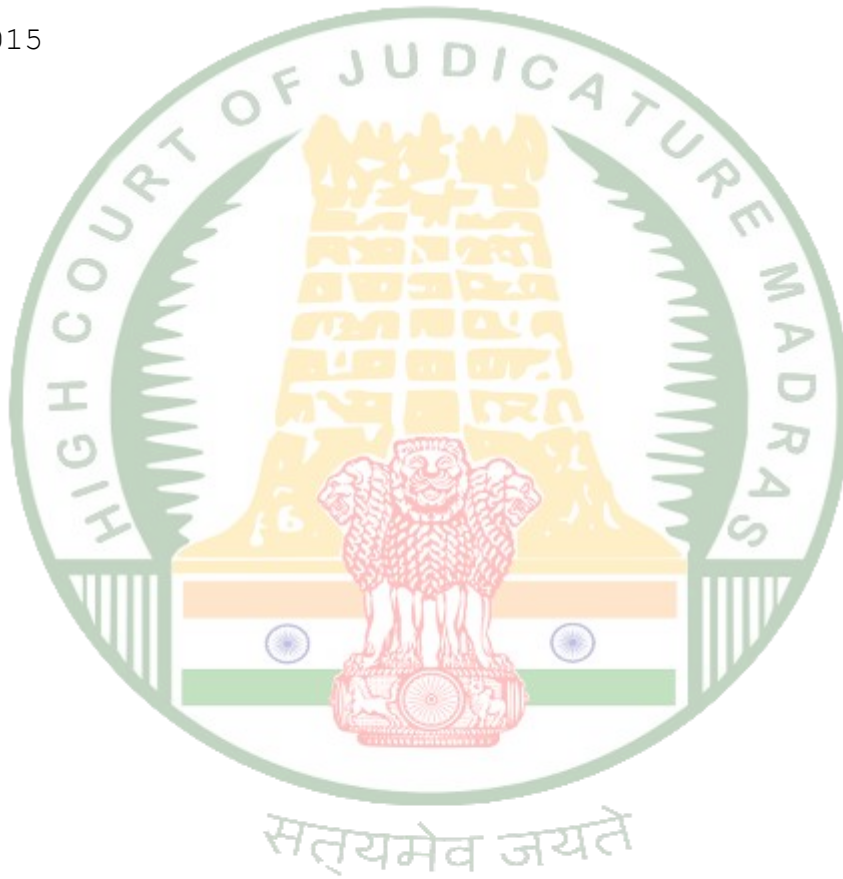
2.-do- Thro The Chief Judicial Magistrate, Salem.

1 cc to Mr..A.Thiyagarajan , Advocate Sr.No.41879

1 cc to Mr.Selvaraj , Advocate Sr.No.42433

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gj (co)
pmk.7.9.2015



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