IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.476 of 2007

M.Dinesh Kumar ... Appellant/Complainant

vs.

Jegath Surana @ Jegath Singh Surana
Prorpietor,
M.D.Exports,
24, Workshop Street, Kadar Pet,
Tiruppur ... Respondent /Accused

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment dated 8.3.2007 passed in C.C.No.170/03 on the file of the Judicial Magistrate, No.1, Tiruppur.

For appellant : Mr.I.C.Vasudevan

For Respondent : No appearance

JUDGMENT

The order of acquittal dated 8.3.2007, passed in Calendar Case No.170 of 2003, by the Judicial Magistrate, No.I, Tiruppur, 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, 1881 and the same has been taken on file in Calendar Case No.170 of 2003, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that both the complainant and accused are friends. The accused has been running a business and for his business purpose, on 24.4.2002, he received a sum of Rs.2,00,000/- from the complainant by way of debt and in order to discharge the same, on 9.8.2002, he has given three cheques, each for a sum of Rs.50,000/-, in favour of the complainant and the same have been put into concerned bank and the concerned bank has returned the same stating 'funds insufficient' and subsequently, statutory notice has been issued and even after receipt of notice, the accused has failed to

discharge his liability and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. The trial Court, after considering the available evidence on record, has dismissed the complaint by way of holding that the cheques in question have not been issued in connection with an enforceable debt. Against the order of dismissal, the present criminal appeal has been preferred, at the instance of the complainant, as appellant.

5. The learned counsel appearing for the respondent has not made his appearance. Under the said circumstances, the present criminal appeal is disposed of on the basis of the contentions put forth on the side of the appellant/complainant.

6. The learned counsel appearing for the appellant/complainant has contended that on 24.4.2002, the complainant has given a sum of Rs.2,00,000/- to the accused and for discharging the same, on 9.8.2002, the accused has given three cheques, each for a sum of Rs.50,000/-, in favour of the complainant and the same have been put into concerned bank and 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, he failed to discharge his liability. Under the said circumstances, the present complaint has been filed and for the purpose of proving the averments made in the complaint, the complainant has been examined as P.W.1 and he has given clear evidence to the effect that on 24.4.2002 he has given a sum of Rs.2,00,000/- to the accused and for discharging the same, on 9.8.2002, the accused has given the cheques in question and the same have been put into concerned bank and the concerned bank has returned the same stating 'funds insufficient' and subsequently, a statutory notice has been given and even after receipt of the same, the accused has not discharged his liability, but the trial Court, without considering the averments made in the complaint as well as evidence given by P.W.1, 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.

7. The cheques in question have been marked as Exs.P1 to P3 and the same have been put into the concerned bank and the concerned bank has returned all the cheques stating 'funds insufficient' and the memos issued by the concerned bank are marked as Exs.P4 to P6. It is stated on the side of the complainant that a statutory notice has been issued to the accused and even after receipt of the same, the accused has not discharged his liability and the concerned documents have been

filed as Exs.P7 to P10.

8. The trial Court has dismissed the complaint mainly on the ground that income tax return of the complainant has not been marked and there is a slight variation in the signature found in postal acknowledgment from the actual signature of the accused.

9. The learned counsel appearing for the appellant/complainant has contended that as per General Clauses Act, if proper address is given, the presumption is that the concerned notice has been served to the concerned addressee. Even assuming, without conceding that proper statutory notice has been given by the complainant to the accused, the Court has to look into some other ground on which the complaint in question has been dismissed by the trial Court.

10. In the evidence given by the complainant, it has been clearly stated that only a portion of the amount advanced to the accused has been shown in his income tax returns. But to prove the same, no income tax return has been marked on the side of the complainant. Further, on the side of the accused, the concerned income tax return of the complainant has been marked as Ex.D4, wherein, no mention has been made with regard to the amount alleged to have been advanced by the complainant to the accused. If really a huge sum of Rs.2,00,000/- has been advanced to the accused by the complainant, the same would have found place in his income tax return. But as stated earlier, in the income tax return, no such amount has been mentioned.

11. Further the specific case of the complainant is that he advanced a sum of Rs.2,00,000/- to the accused on 24.4.2002 and for the purpose of discharging the same, the accused has given three cheques on 9.8.2002, each for a sum of Rs.50,000/-.

12. If really the complainant has advanced a sum of Rs.2,00,000/- on 24.4.2002, definitely, for discharging the same, one cheque is sufficient. But in the instant case, on the same day, i.e. on 9.8.2002, three cheques have been issued in favour of the complainant.

13. The specific defence put forth on the side of the respondent/accused is that both the complainant and respondent/accused have had business dealings and at that time, the complainant has obtained blank cheques from the accused and by utilizing the same, the cheques in question are filled up and subsequently filed in the present proceeding.

14. It has already been pointed out that on the side of the complainant it has not been positively proved that on

24.4.2002, the complainant has advanced a sum of Rs.2,00,000/-. Further it has already been pointed out that no relevant entry is made in the income tax return of the complainant. Therefore, it is quite clear that since on the side of the complainant the above factual aspects are not proved, the Court can very well come to a conclusion that the cheques in question are not supported by consideration.

15. Since the cheques in question are not supported by consideration and since the complainant has not at all proved that the said sum of Rs.2,00,000/- has been given to the accused, it is very clear that the cheques in question have not been issued in connection with an enforceable debt.

16. The trial Court, after considering the available evidence on record, has rightly found that the cheques in question have not been given in connection with an enforceable debt. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/complainant are of no use.

In fine, this criminal appeal is dismissed. The order of acquittal passed in Calendar Case No.170 of 2003, by the Judicial Magistrate No.I, Tiruppur, is confirmed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

msk

To :
1.The Judicial Magistrate, No.1, Tiruppur
2.The Public Prosecutor,
High Court, Madras
3.The Section Officer, Criminal Section,
High Court, Madras.

+1 cc to Mr.I.C.Vasudevan, Advocate, sr.56078

Crl.A.No.476 of 2007

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