

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.12.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.A.No.520 of 2008

A.Yasim Khan

.. Appellant

Vs.

A.Abdul

.. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the judgment dated 17.8.2007 passed by the Additional District Judge (Fast Track Court No.I, Salem) in C.A.No.54 of 2006, reversing the order dated 20.3.2006, passed by the Judicial Magistrate, No.I, Salem in C.C.No.1124 of 2004.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.A.Nagarathinam

JUDGMENT

The order of acquittal passed in Crl.A.No.54 of 2006, by the Additional District and Sessions Court (Fast Track Court No.I), Salem, is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed a complaint in question under Section 138 of the Negotiable Instruments Act 1881, on the file of the Judicial Magistrate No.I, Salem and the same has been taken on file in Calendar Case No.1124 of 2004, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that the accused has received a sum of Rs.1,00,000/- by way of debt, from the complainant, on 10.08.2000 and to that extent, he executed a promissory note. In order to discharge his liability, on 21.07.2003, he has given the cheque in question and the same has been presented in the concerned bank and the concerned bank has returned the same stating 'funds insufficient' and subsequently, statutory notice has been given and even after receipt of the same, the accused has not discharged his liability. Under the said circumstances, the present

complaint has been filed for getting the relief sought therein.

4. The trial Court, after considering the available evidence on record, has found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo imprisonment, mentioned in the judgment. Against the conviction and sentence passed by the trial Court, the accused, as appellant, has preferred Criminal Appeal No.54 of 2006, on the file of the first appellate Court.

5. The first appellate Court, after hearing arguments of both sides and upon re-appraising the available evidence on record, has allowed the appeal and thereby set aside the conviction and sentence passed by the trial Court and ultimately acquitted the accused. Against the order of acquittal, the present criminal appeal has been preferred, at the instance of the complainant, as appellant.

6. The learned counsel appearing for the appellant has contended that on 10.08.2000, the accused has received a sum of Rs.1,00,000/-, by way of debt from the complainant, by way of executing a promissory note and in order to discharge the same, he has given the cheque in question and the same has been presented in the concerned Bank, but the concerned bank has returned the same stating 'funds insufficient' and subsequently, statutory notice has been issued and even after receipt of the same, the accused has not discharged his liability and under the said circumstances, the present complaint has been filed. The trial Court, after considering the available evidence on record, has rightly found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881, but the first appellate Court, without properly re-appraising the available evidence on record, has erroneously acquitted the accused and therefore, the order of acquittal 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. The learned counsel appearing for the respondent/accused has contended that there is no nexus in between the accused and complainant and the sister of the complainant has run chits and in one chit, the accused has become a subscriber and the sister of the complainant has received a blank cheque from the accused and by utilising the same, the present complaint has been filed and the trial Court, without considering the nature of the defence taken on the side of the accused, has erroneously found him guilty under Section 138 of the Negotiable Instruments Act, 1881, but the first appellate Court, after considering the evidence available on the side of the accused, has rightly acquitted the accused and therefore, the order of acquittal passed by

the first appellate Court does not call for any interference.

8. On the basis of the divergent submissions made on either side, the Court has to look into the averments made in the complaint.

9. In the complaint, it has been specifically stated that on 10.08.2000, by way of executing the pro-note in favour of the complainant, the accused has received a sum of Rs.1,00,000/-. But to prove the same, the pro-note, alleged to have been executed by the accused, has not been marked on the side of the complainant. At this juncture, an attempt has been made by way of saying that on the basis of pro-note, a civil suit has been filed and the same is pending. Even for proving the same, no document has been filed. Since the above vital aspects have not been proved on the side of the complainant, the Court cannot automatically come to a conclusion that on 10.8.2000, the accused has received a sum of Rs.1,00,000/- in the form of debt from the complainant, by way of executing the pro-note and in order to discharge the amount mentioned therein, the cheque in question has been given.

10. Since on the side of the complainant, the above vital aspects have not been established, it is very difficult to come to a conclusion that the cheque in question has been given in connection with an enforceable debt, in favour of the complainant.

11. The specific defence taken on the side of the accused is that the sister of the complainant has run chits and in one chit,

the accused has become member and at the time of making membership, he has given a blank cheque to the sister of the complainant and by utilising the same, the present complaint has been filed.

12. As adverted to earlier, the pro-note, alleged to have been executed by the accused, in favour of the complainant, on 10.08.2000, has not been marked. Since the alleged pro-note has not been marked on the side of the complainant, the defence taken on the side of the accused can easily be accepted.

13. The trial Court, without considering lack of evidence on the side of the complainant, has erroneously found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881. But the first appellate Court, after re-appraising the available evidence on record, has rightly found the accused not guilty under the said Section. In view

of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/complainant and altogether the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The order of acquittal passed in CrI.A.No.54 of 2006, by the Additional District Judge, Salem, is confirmed.

Sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

msk

To

- 1.The Additional District Judge
(Fast Track Court No.I, Salem)
- 2.-do- thro The Principal District Judge, Salem
- 3.The Judicial Magistrate, No.I, Salem
- 4.-do- thro The Chief Judicial Magistrate, Salem

+1 CC to MR.A.Nagarathinam Advocate. SR.NO.68468

CrI.A.No.520 of 2008

CO-KSJ
JD 31/12/2015

सत्यमेव जयते

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