IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.A.No.1081 of 2004

K.Vangili Gounder ..Appellant/Complainant

Vs.

P.Swaminathan ..Respondent/sole Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C. against the judgment of acquittal passed by the learned Judicial Magistrate No.I, Namakkal, in C.C.No.21 of 2002, dated 9.3.2004.

For Appellant : Mr.D.Shivakumaran

For Respondent : Mr.N.Manoharan

JUDGMENT

The order of dismissal dated 9.3.2004, passed in Calendar Case No.21 of 2002, by the Judicial Magistrate No.1, Namakkal, is being challenged in the present criminal appeal.

2. The appellant herein, as complainant, has filed a complaint under Sections 138 r/w.142 of the Negotiable Instruments Act, 1881, on the file of the Court below, wherein the present respondent has been shown as accused.

3. It is averred in the complaint that on 3.12.2001, the accused has received a sum of Rs.40,000/- by way of debt from the complainant and for the purpose of discharging the same, he has given the cheque in question dated 3.12.2001 and the same has been put into bank. The bank has returned the same stating 'funds insufficient' and subsequently, on 13.12.2001, a statutory notice has been given and even after receipt of the same, the accused has failed to discharge his liability and thereby committed an offence punishable under Sections 138 r/w 142 of the Negotiable Instruments Act, 1881. Under the said circumstances, the present complaint has been filed.

4. The Court below, after considering the available evidence on record, has dismissed the complaint. 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 appellant/complainant has contended with great vehemence that the accused has received a sum of Rs.40,000/- by way of debt from the complainant and for the purpose of discharging the same, the cheque in question has been given on 3.12.2001 in the name of the complainant and the same has been put into bank, but the 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. But the Court below, without considering the available evidence on record, has dismissed the complaint and therefore, the dismissal order passed by the Court below is liable to be set aside and the accused is liable to be mulcted with liability.

6. Per contra, the learned counsel appearing for the respondent/accused has contended that on the basis of the complaint given by the present complainant, a case has been registered in Crime No.17 of 2001 and subsequently, the concerned FIR has been referred to Economic Office Court No.II, Namakkal, wherein, the concerned investigating officer has filed a memo stating that the complainant himself is not willing to proceed with the complaint, since he received the amount in question and the relevant documents have been filed into Court and the Court below, after considering the aforesaid factual aspects, has rightly dismissed the complaint and therefore, the dismissal order passed by the Court below does not call for any interference.

7. Basing upon the rival submissions made on either side, the only point that has to be decided in the present criminal appeal is as to whether the respondent/accused has committed an offence punishable under Sections 138 r/w 142 of the Negotiable Instruments Act, 1881.

8. The consistent case put forth on the side of the appellant/complainant is that the respondent/accused has received a sum of Rs.40,000/- from the complainant and for the purpose of discharging the same, the cheque in question has been issued on 3.12.2001 in favour of the complainant.

9. The defence put forth on the side of the respondent/accused is that the respondent/accused has already settled the amount in question and therefore, no enforceable debt is in existence, at the time of filing the present complaint.

10. The entire file relating to Cr.No.17 of 2001 has been marked as Ex.D5, wherein the investigating officer has filed a report into the Court by way of stating that the respondent/accused has already settled the amount in favour of the complainant and the complainant himself is not willing to proceed with the case registered in Cr.No.17 of 2001.

11. Considering the report filed by the investigating officer relating to Crime No.17 of 2001, the Court can easily come to a conclusion that the matter between the appellant/complainant and respondent/accused has already been settled and at the time of filing the present complaint, no enforceable debt is in existence. Since no enforceable debt is in existence, the Court cannot come to a conclusion that the respondent/accused has committed an offence punishable under Sections 138 r/w 142 of the Negotiable Instruments Act, 1881. The trial Court, after considering the available evidence on record, has rightly found that the respondent/accused has not committed an offence punishable under the said Section. In view of the foregoing narration of factual aspects, 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 C.C.No.21 of 2002, by the Judicial Magistrate No.I, Namakkal, is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Judicial Magistrate No.I,
   Namakkal .

2. -d- Through The Chief Judicial Magistrate, Namakkal.

3. The public Prosecutor, High Court, Madras.

+ 1 cc to M/s. N. Manokaran, Advocate SR.45756
+ 1 cc to Mr.D. Shivakumaran, Advocate Sr.45573

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UG(CO)
Eu 14.10.15