

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.791 of 2008

K.Subramanian

... Appellant/complainant

vs.

T.R.Ashok

...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, 1973 against the judgment dated 13th day of August 2008 made in C.A.No.98/2007 on the file of IV Additional and Sessions Court, Chennai.

For appellant : Mr.R.Jagadeesan
for Mr.K.V.Subramanian Associates

For respondent : Mr.B.R.Shankaralingam

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal passed in Criminal Appeal No.98/2007 by the IV Additional and Sessions Court, Chennai, wherein, the conviction and sentence passed in C.C.No.7684/2005 by the VIII Metropolitan Magistrate, George Town, Chennai are reversed.

2. The appellant herein as complainant has filed complaint in question under Section 138 read with 142 of the Negotiable Instruments Act, 1881, wherein, the present respondent has been shown as sole accused.

3. In the complaint, it is averred that both the complainant and accused are friends. The accused has received a sum of Rs.6,00,000/- from the complainant to meet out his personal expenses and also agreed to discharge his liability within a month. But he has not been able to discharge his liability. Under the said circumstances, on 23.12.2004, the accused has given the cheque in question in favour of the complainant for a sum of Rs.6,00,000/- and the same has been presented in the concerned Bank on 17.05.2005, but the Bank has returned the same on 19.05.2005 and subsequently, a legal notice has been given on 04.06.2006 and the same has been served to the accused on 09.06.2005 and he has given a false reply notice on 20.06.2005.

Under the said circumstances, the present petition has been filed for getting the relief sought for therein.

4. The trial court, after considering the divergent submissions made on either side has found the accused guilty under Section 138 read with 142 of the Negotiable Instruments Act, 1881 and sentenced him to undergo imprisonment and also imposed a fine of Rs.6 Lakhs as mentioned in the judgment. As Against the conviction and sentence passed by the trial court, the accused as appellant has filed Criminal Appeal No.98/2007 on the file of the First Appellate Court.

5. The First Appellate Court, after hearing both sides and upon perusing available evidence on record has allowed the appeal and thereby, set aside the conviction and sentence and consequently acquitted the accused. Against the order of acquittal passed by the First Appellate Court, the present Criminal Appeal has been preferred at the instance of the complainant as appellant.

6. The learned counsel appearing for the appellant/complainant has reiterated the averments made in the complaint. Further, he has contended that the accused is a Chartered Accountant and he has candidly admitted to the effect that he put his signature on the cheque in question, but the only defence taken on the side of the accused is that the defacto complainant has approached him for getting loan and only for that purpose, he has given the cheque in question. The trial court, after disbelieving the defence taken on the side of the accused, has rightly invited the convictions and sentences against him but the First Appellate Court has failed to appreciate the evidence available on the side of the complainant and also presumption available in Negotiable Instruments Act, 1881, 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. In order to resile the contention put forth on the side of the appellant/complainant, the learned counsel appearing for the respondent/accused has contended that the trial court has failed to appreciate the evidence given by the complainant, but the First Appellate Court has rightly appreciated the same and ultimately found that the complainant has not discharged his initial burden and therefore, the order of acquittal passed by the First Appellate Court need not be set aside.

8. The learned counsel appearing for the appellant/complainant has relied upon the following decisions:-

- (i) 1999 Cr1.L.J.4606(1) [K.Bhaskaran Vs. Sankaran Vaidhyan Balan and another];
- (ii) CDJ 2001 SC 366 [Hiten P.Dalal Vs. Bratindranath Banerjee]
- (iii) 2001 Cr1.L.J.4745 [K.N.Beena Vs. Muniyappan and another]

(iv) 2005 CrI.L.J.1454 [M/s.General Auto Sales Vs. Vijayalakshmi.D]

(v) I (2014) BC 256 (Del.) [Mahendra M.Malviya & Ors. Vs. Bhagwan Singh T.Rajput & Anr.]

(vi) CDJ 2015 MHC 1934 [S.Mukanchand Bothra Vs. P.Mani]

(vii) CDJ 2015 MHC 4832 [Ravishankar Vs. Sasikanth Power agent of M/s.V.S.Tex by its Partner P.Vetrivel Tirupur & Another].

wherein, it has been clinchingly stated that when the concerned accused has admitted his signature found in the cheque, as per Section 118 of the Negotiable Instruments Act, 1881, a strong presumption is available with regard to passing of consideration.

9. It is an everlasting principle of law that as per Section 118 of the said Act, the court can very well presume with regard to passing of consideration, but at the same time, the presumption available under the said section is not conclusive, but it is rebuttable.

10. The learned counsel appearing for the respondent/accused has pointed out that, the trial court has solely relied upon the evidence given by the complainant. The complainant has been examined as P.W.1. During the course of cross examination, he would say that he advanced money to the accused through cheque. Further he has deposed that he does not know in which Bank, he is having account. If really, such payment has been made through cheque, since a strong defence has been taken on the side of the respondent/accused, the complainant would have taken proper steps so as to send for the alleged cheque transaction. Further, it is not the evidence of the complainant that he has given the said sum of Rs.6 Lakhs in cash to the accused, whereas, his evidence is that he has given the said amount through cheque payment. But to prove the same, he has not filed any document.

11. It has already been pointed out that the presumption available under Section 118 of the Negotiable Instruments Act, 1881 is not a conclusive presumption, but it is a rebuttable presumption. In the instant case, on the side of the accused, the case of the complainant is clearly rebutted. Since the case of the complainant is clearly rebutted, it is needless to state that the court can very well come to a conclusion that the complainant has miserably failed to prove that the cheque in question is supported by consideration.

12. It is also equally a settled principle of law that Section 138 of the Negotiable Instruments Act, 1881 can be invoked only in respect of an enforceable debt. As stated supra, the complainant has not discharged his initial burden. The trial court, without considering the burden of proof has relied upon presumption, but the First Appellate Court, after considering the evidence given by the complainant has rightly dismissed the complaint. In view of the discussion made earlier, this court has not found any merit in the

contention put forth on the side of the appellant/complainant and altogether this criminal appeal is liable to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of acquittal passed in C.A.No.98/2007 by the Additional Sessions Court, Chennai is confirmed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

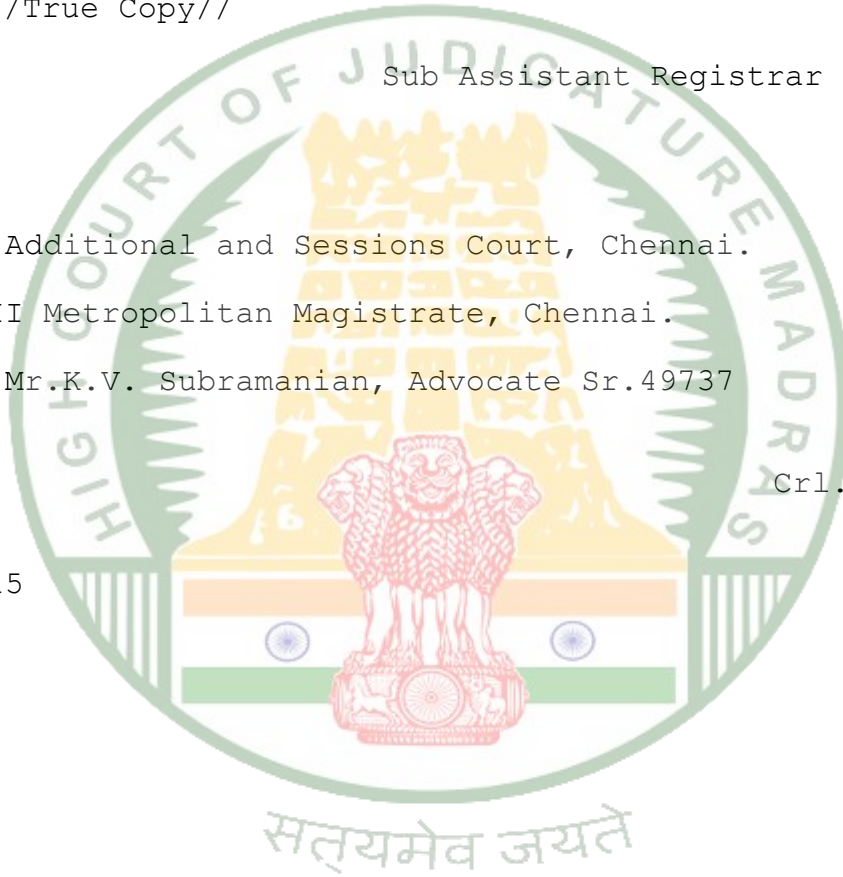
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To

1. The IV Additional and Sessions Court, Chennai.
 2. The VIII Metropolitan Magistrate, Chennai.
- + 1 cc to Mr.K.V. Subramanian, Advocate Sr.49737

Crl.A.No.791 of 2008

JSV(CO)
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