IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25-08-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.536 of 2006

M/s. Lakshmi Financiers
rep. by its Managing Director
S. Boopathi ... Appellant

Vs.

Damodaran, Proprietor
M/s. Jothy Films
63, Andavar Street
Collectorate Post
Erode District ... Respondent

Criminal Appeal under Section 378 of Cr.P.C., against the judgment passed by the Judicial Magistrate No.III, Coimbatore in acquitting the respondent/accused herein in C.C.No.50 of 2000 by its judgment dated 29-03-2006 and prays that this Court may be pleased to set aside the judgment of the Judicial Magistrate No.III, Coimbatore.

For appellants :: Mr. J. Ramakrishnan

For respondent :: Mr. P. Mathivanan

JUDMENT

The order of acquittal dated 29-03-2006, passed in C.C.No.50 of 2000 by the Judicial Magistrate No.III, Coimbatore 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 ('the Act' in short), wherein the present respondent has been shown as a sole accused.

3. It is averred in the petition that on 07-07-1994, the accused has received a sum of Rs.4,00,000/- by way of debt from the complainant and to that extent, on the same day, an agreement has come into existence. It is agreed by the accused to discharge his liability in ten instalments. But the accused has not discharged his entire liability and for the purpose of discharging remaining amount of Rs.1,29,712/- (Rupees One lakh twenty nine thousand seven hundred and twelve only), he issued a cheque on 24-07-1997, in favour of the complainant and the same has been presented in the Bank. But the concerned bank has returned the same stating "funds insufficient" and subsequently, on 16-08-1997, a legal notice has been given to the accused and after receipt of the same, he has given a reply notice on 02-09-1997. Since the accused has not

discharged his liability even after issuance of statutory notice, he committed an offence punishable under Sections 138 read with 142 of the Act. Under the said circumstances, 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 by way of holding that the accused is not punishable under Sections 138 read with 142 of the Act and against the order passed by the Court-below the present criminal appeal has been preferred at the instance of the complainant, as appellant.

5. The learned counsel for the appellant/complainant has repeatedly contended that on 07-07-1994, the accused has received a sum of Rs.4,00,000/-(Rupees Four lakhs only) by way of debt from the complainant and to that extent, he executed a promissory note and on the same day, an agreement has come into existence and further, it is agreed by the accused that he should discharge his liability in ten instalments and since he has not discharged his entire liability on 24-07-1997, he has given a cheque for a sum of Rs.1,29,712/- (Rupees One lakh twenty nine seven hundred and twelve only) in favour of the complainant 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 given and even after receipt of the same, the accused has failed to discharge his liability and the Court-below without considering the documents filed on the side of the appellant/complainant has erroneously come to the conclusion that the accused has not committed offence punishable under Section 138 and 142 of the Act and ultimately, dismissed the complaint and therefore, the order of dismissal passed by the Court-below is liable to be set aside and the accused is liable to be punished in accordance with law.

6. In order to resile the contentions put forth on the side of the appellant/complainant, the learned counsel appearing for the respondent/accused has also equally contended that on 07-07-1994, the accused has received a sum of Rs.4,00,000/- (Rupees Four lakhs only)by way of debt from the complainant and subsequently, he discharged his entire liability and at the time of receipt of loan, he has given the cheque, in question as security and after discharging the loan, he sent a notice to the complainant whereby demanded return of all documents executed by him and the cheque, in question is not supported by consideration and the Court-below after considering the available evidence on record has rightly found that the cheque, in question has not been issued in respect of an enforceable debt and therefore, the dismissal order passed by the Court-below need not be set aside.

7. The entire case of the appellant/complainant is based upon the following documents:

(i) Ex-P10 is a promissory note dated 07-07-1994 executed by the accused in favour of the complainant.

(ii) Ex-P11 is an agreement dated 07-07-1994.

(iii) Ex-P12 is an Account Statement dated 07-07-1994.

(iv) Ex-P2 is the cheque, in question alleged to have been issued by the accused in favour of the complainant on 24-07-1997.

8. It is true that on 16-08-1997, the complainant has sent a notice(Ex-P4) to the accused. After receipt of the same, the accused has given Ex-P6, reply notice, wherein it has been clearly stated that no amount is due to the complainant from the accused.

9. The main defense taken on the side of the accused is that at the time of receipt of loan, the cheque, in question and other documents have been given to the complainant as security and the same has been utilised in the present case.

10. For considering the rival submissions made on either side, the Court has to look into Ex-P1, the letter dated 29-07-1997.

11. It is seen from the evidence that prior to 29-07-1997, the accused has written a letter to the complainant wherein he asked the complainant to return all the documents as he has repaid the loan amount. The complainant has written a letter Ex-P1 and this Court has closely perused the same and ultimately found that in Ex-P1, the transactions between the accused and complainant have been mentioned. But, nowhere in Ex-P1 it is stated about issuance of cheque, dated 24-07-1997.

12. It is admitted fact that the cheque, in question is said to have been issued by the accused in favour of the complainant, on 24-07-1997. But, Ex-P1 has come into existence on 29-07-1997. If really Ex-P2 cheque has been given on 24-07-1997 for the purpose of repaying the remaining loan amount of Rs.1,29,712/- (Rupees One lakh twenty nine seven hundred and twelve only), the same would have found place in Ex-P1. But, in Ex-P1, mere loan transactions of the complainant as well as accused are mentioned and issuance of cheque on 24-07-1997, by the accused in favour of the complainant has not been mentioned. Therefore, it is clear that the cheque, in question has been given at the time of receipt of loan, as a security. Under the said circumstances, the Court can easily come to a conclusion that the cheque, in question has not been given in respect of an enforceable debt.

13. It is settled principle of law that as per Section 138 of the Act, the cheque, in question must be given in respect of an enforceable debt. The presumption available under Section 118 of the said Act, is nothing but a rebuttable presumption. In the instant case, even as per the letter dated 29-07-1997, the Court can easily deduce that Ex-P2 cheque has been given only at the time of loan transaction and the same is not supported by consideration. Further, the same has not been issued in respect of an enforceable debt and therefore, it is quite clear that, that the accused has not committed an offence punishable under Section 138 read with Section 142 of the Act. The Court-below after considering the available evidence on record has rightly found that the accused has not committed the offence mentioned in the complaint and therefore, viewing from any angle, the order of dismissal passed by the Court-

below cannot be assailed and altogether, the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The order of dismissal passed in C.C.No.50 of 2000 passed by the Judicial Magistrate No.III, Coimbatore, is confirmed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

glp
To
The Judicial Magistrate No.III, Coimbatore.

1 cc to Mr. P. Mathivanan, Advocate Sr.No.45556

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