



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.59 of 2006

Coimbatore Roller Flour Mills Ltd.,
Sivasakthi Colony,
Ganapathy,
Coimbatore
Rep. By Power Attorney Jayaraman
S/o. Natasa Iyyer

... Appellant/complainant

v.

Chandramouli

... Respondent /Accused

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment passed by the learned Judicial Magistrate No.II at Coimbatore in C.C.No.700 of 2001, dated 2.9.2005 and convict the respondent herein.

For appellant : Mr.MA.P.Thangavel

For Respondent : Mr.S.Saravanan

JUDGMENT

This Criminal Appeal has been directed against the order of acquittal passed in Calendar Case No. 700 of 2001 by the Judicial Magistrate No.II, Coimbatore.

2. The appellant herein, as complainant, has filed the compliant in question and the same has been taken on file in Calendar Case No. 700 of 2001, wherein the present respondent has been shown as sole accused. In the complaint, it is averred that the respondent has been appointed as an Area Agent so as to collect the amounts due from the customers and accordingly, the accused has collected Rs.2,88,440/- and subsequently he paid only a meagre sum of Rs.3,590/- and failed to pay the balance amount. Under such circumstances, he executed certain documents including a promissory note and even after such execution, the accused has failed to discharge his liability. Under such circumstances, he cheated the



complainant and therefore, the complaint has been filed for getting the relief sought therein.

3. The Trial Court, after considering the divergent facts and evidences available on record, has dismissed the complaint.

4. As against the dismissal order, 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 repeatedly contended that the accused has acted as an Agent of the complainant and his main duty is to collect amounts from the customers and in that way he collected a sum of Rs.2,88,440/- and out of the said amount, he has paid only a meagre amount and failed to pay the remaining amount. Under such circumstances, by way of acknowledging his liability, he executed certain documents including a promissory note and in spite of this, he failed to discharge his liability and thereby cheated the complainant. Under such circumstances, the present complaint has been filed wherein an offence punishable under section 420 of Indian Penal Code is made out and the Trial Court even without considering the plenitude of evidence available on the side of the complainant has erroneously dismissed the complaint and therefore, the dismissal order passed by the Trial Court is liable to be set aside.

6. Per contra, learned counsel appearing for the respondent-accused has contended that the respondent-accused has executed certain documents by way of acknowledging his liability and there is no intention on his part to cheat the complainant and the Trial Court after considering the nature of documents executed by the respondent-accused has rightly found that the offence punishable under section 420 of Indian Penal Code is not made out and therefore, the dismissal order passed by the Trial Court is perfectly correct and the same does not call for any interference.

7. The short point that comes up for consideration in the present Criminal Appeal is as to whether the the respondent-accused had acted with mala fide intention so as to cheat the appellant-complainant?

8. On the side of the appellant-complainant, various documents have been filed for the purpose of proving the alleged liability of the accused and some of the documents are acknowledgments as well as promissory note alleged to have been executed by the accused.

9. The Trial Court, after considering the evidences available on record, has given a finding to the effect that for the purpose of redressing the grievance of the complainant, the complainant can very well file a Civil Suit.



10. It has already been pointed out that the accused is said to have executed acknowledgments and promissory note. Since the accused has executed acknowledgments and promissory note in favour of the complainant, the court can very well come to a conclusion that there is no sinister motive on the part of the accused so as to deceive the complainant. Further, since the accused has executed certain documents, admissible under law, the complainant can very well institute a Civil Suit so as to recover the amount due from the accused, but the complainant has not done it.

11. It has already been pointed out that there is no mala fide intention on the part of the accused so as to cheat the complainant. Since he executed the documents mentioned supra, the court cannot come to a conclusion that the accused has committed an offence punishable under section 420 of Indian Penal Code.

12. The Trial Court, after considering the divergent facts available on record, has rightly found that the offence punishable under section 420 of Indian Penal Code is not made out and altogether, the present appeal deserves to be dismissed.

13. In fine, this Criminal Appeal is dismissed and the order passed in C.C.No.700 of 2001 by the court below is confirmed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Rj
To
1. The Judicial Magistrate No.II,
Coimbatore

2. The Section Officer, VR Section, High Court, Madras.

+1 cc to Mr.S.Saravanan, Advocate, sr.53572

Cr1.A.No.59 of 2006

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