

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05-11-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.651 of 2006

K.S. Balaraman

..Appellant/Complainant

Vs.

V. Sankaran,
Prop. M/s. Kiran Builders
1544/1547, Ram Nagar
Annanagar

West Extension, Chennai - 101 ...Respondent/Respondent

Criminal Appeal against the order of acquittal passed by the
Judicial Magistrate No.II at Walajah in C.C.No.236 of 2004
dated 20-06-2006.

For appellant :: Mr. R. Margabandhu

For respondent :: Mr. A.K. Lakshmipathy

JUDGMENT

This criminal appeal has been directed against the order
of acquittal dated 20-06-2006 passed in C.C.No.236 of 2004 by
the Judicial Magistrate No.II, Walajahpet.

2. The appellant herein, as complainant has filed the
complaint, in question, under Section 138 of the Negotiable
Instruments Act and the same has been taken on file in
C.C.No.236 of 2004, wherein the present respondent has been
shown as sole accused.

3. It is averred in the petition that on 10-07-2002,
the complainant and one Kiran Builders represented by the
accused, have entered into an agreement. The accused has
demanded a sum of Rs.25,00,000/- (Rupees Twenty lakhs only) and
accordingly, the complainant has given the same on 10-07-2002
itself by way of cheque. The accused has not performed the
terms of agreement. Under the said circumstances, he has given
the cheque, in question, in favour of the complainant for a
sum of Rs.43,00,000/- (Rupees Forty three lakhs only). The
same has been put into concerned Bank. The concerned Bank has
returned the same stating "exceed arrangement". The
complainant has given a statutory notice and even after
receipt of the same, the accused has not discharged his
liability nor given any reply notice and therefore, he has
committed an offence punishable under Section 138 of the

Negotiable Instrument Act.

4. The Trial Court after contemplating the rival contentions put forth on either side has dismissed the complaint by way of holding that the cheque, in question has not been given in respect of an enforceable debt and thereby acquitted the accused. Against the order of acquittal, the present criminal appeal has been preferred at the instance of the complainant, as appellant.

5. The learned counsel appearing for the appellant has repeatedly contended that on 10-07-2002, an agreement has come into existence in between the complainant and accused whereby the accused has received a sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) from the complainant and since the accused has not performed his part of contract, subsequently, he has agreed to give the said sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) together with interest and accordingly, a sum of Rs.43,00,000/- (Rupees Forty three lakhs only) has been arrived and in order to discharge the same, the cheque, in question has been given by the accused in favour of the complainant on 04-06-2004 and the same has been put into the concerned Bank and the concerned Bank has returned the same stating "exceeds arrangement" and thereafter, a statutory notice has been issued and even after receipt of the same, the accused has not discharged his liability nor given any reply notice and for the purpose of proving issuance of cheque dated 04-06-2004, the complainant has been examined as P.W.1 and in fact, he has given clinching evidence with regard to the said aspect, but the Trial Court even without looking into the averments made in the complaint as well as evidence adduced by the complainant, has erroneously dismissed the complaint and therefore, the dismissal order passed by the Trial Court is liable to be set aside and the accused is liable to be punished, in accordance with law.

6. 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 an agreement has come into existence on 10-07-2002 in between the complainant and accused and thereafter, on 10-10-2002 another agreement has come into existence and at the time of executing the agreement dated 10-07-2002, the complainant has obtained blank cheque and blank pronote from the accused and no agreement has come into existence as stated on the side of the complainant with regard to payment of Rs.43,00,000/- (Rupees Forty three lakhs only) and further, the accused has not given the cheque, in question in respect of the said amount and by way of utilizing the blank cheque, the present proceeding has been instituted and the Trial Court after considering the rival evidence adduced on either side, has rightly dismissed the complaint and therefore, the dismissal order passed by the Trial Court does not require any interference.

7. Basing upon the divergent submissions made on either side, the Court has to analyse as to whether the cheque, in question has been given only in respect of an enforceable debt.

8. The agreement dated 10-07-2002 has been marked as Ex-P1. The cheque in question dated 04-06-2004 has been marked as Ex-P2. The agreement dated 10-10-2002 has been marked as Ex-D11.

9. The consistent case put forth on the side of the appellant/complainant is that on the date of execution of Ex-P1, the complainant has given a sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) to the accused and since he failed to perform his part of the contract, subsequently, the accused has accepted to give a sum of Rs.43,00,000/- to the complainant and in order to discharge his liability, the cheque, in question has been given in favour of the complainant.

10. It has already been stated that after Ex-P1, Ex-D11 has come into existence on 10-10-2002. In Ex-D11, clause No.7, it is stated like thus:

"The PROMOTER shall utilize this fund for promoting this project, and shall repay a return of Rs.11.25 lakhs in addition to the original investment of Rs.25lakhs on completion of the project."

No mention has been made with regard to amount of Rs.43,00,000/- (Rupees Forty three lakhs only) agreed to be paid by the accused to the complainant. Further, no separate agreement has come into existence with regard to the said sum of Rs.43,00,000/- (Rupees Forty three lakhs only).

11. On the side of the accused one Ravi, the concerned Bank Manager has been examined as D.W.1 and his specific evidence is that the accused has had his previous account in account No.135 and his new account number is 16. Further, he would say in his evidence that cheque in respect of account No.16 is only in green colour, whereas the cheque in respect of account No.135 is in red colour.

12. In the instant case, as stated earlier, the cheque, in question has been marked as Ex-P2 and the same is in red colour wherein account No.16 has been mentioned.

13. The consistent defence taken on the side of the respondent/complainant is that at the time of first agreement, the complainant has insisted him to give a blank cheque and blank pronote and the said blank cheque has been utilised in the instant case.

14. The complainant has been examined as P.W.1 and his specific evidence is that he obtained pronotes from the accused and the same are being kept for instituting civil suits. If really, after Ex-D11, an arrangement has been made in between the complainant and accused with regard to the amount mentioned in the cheque, as noted down earlier, some agreement would have emerged in written. Further, as per the evidence given by P.W.1, it is needless to say that he is having pronotes alleged to have been executed by the accused. Therefore, the evidence given by P.W.1 seems to be that on the date of giving the cheque, in question, he obtained pronotes. But for the scrutiny of the Court, those pronotes have not been marked on the side of the complainant.

15. It has already been pointed out that in Ex-P2 cheque, new account number of the accused has been mentioned and in fact, Ex-P2 cheque, is not related to new account. Therefore, it is very clear that the evidence given by P.W.1 and the evidence adduced on the side of the accused have probalised the defence taken on the side of the respondent/accused.

16. It is an everlasting principle of law that a legal presumption is available with regard to execution and also passing of consideration under the Negotiable Instruments Act, 1881. But the said presumption is not a conclusive evidence and the same is rebuttable one. In the instant case, every transaction has been made by the complainant and the accused, only by way of entering into agreement. But no agreement has come into existence with regard to Rs.43,00,000/- (Rupees Forty three lakhs only). Therefore, it is clear that the complainant has not at all established the alleged fact that the cheque, in question has been issued only in respect of an enforceable debt. Further, the evidence available on the side of the accused has clearly established to the effect that the cheque, in question as well as pronote in blank form have been obtained by the appellant/accused at the time of execution of Ex-P1 and by falsely utilizing the same, the present petition has been filed. Since the cheque, in question is not supported by consideration and the same has not been given in favour of the complainant in respect of an enforceable debt, the Court cannot automatically come to a conclusion that accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act. The Trial Court after considering the overall evidence available on record has rightly dismissed the complaint.

17. In view of the foregoing elucidation of both factual and legal premises, this Court has not found any 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 dated 20-06-2006 passed in C.C.No.236 of 2004 by the

Judicial Magistrate No.II, Walajahpet is confirmed.

sd/
ASSISTANT REGISTRAR (CS-VI)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

glp

To

1. The Judicial Magistrate No.II at Walajah

2. -do-thro' The Chief Judicial Magistrate,
Vellore District.

+1 CC to MR.A.K. Lakshmipathy Advocate. SR.NO. 61483
+1cc to M/S.R.Margabandhu, Advocate Sr.61661[15/12/2015]

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JD 20/11/2015



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