

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.486 of 2004

M/s.Sri Rajan Textiles
Prop.Anbalagan
146/F, Appu Chetty Street
Sri Hari Complex
Shevapet, Salem 2

Appellant/Complainant

Vs.

R.Gomathy

Respondent/Accused

Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records and set aside the acquittal judgment dated 30.1.2004 passed in C.C.No.376 of 2000 on the file of the Judicial Magistrate No.III, Salem and convict the accused for an offence under section 138 of Negotiable Instruments Act.

For appellant : Mr.A.Nagarathinam

For Respondent : No appearance

JUDGMENT

The dismissal order dated 30.1.2004 passed in Calendar Case No.376 of 2000 by the Judicial Magistrate Court No.3, Salem is being challenged in the present Criminal Appeal.

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

3. It is averred in the complaint that both the complainant and accused are having business transactions in respect of thread. On 29.12.1999, the accused is bound to pay a sum of Rs.89,600/- and for the purpose of discharging the same, on 21.1.2000, she has given the cheque in question and the same has been put into the concerned bank and the concerned bank has returned the same stating "funds insufficient" and subsequently, a legal notice has been issued and even after receipt of legal notice, the accused has not discharged her liability and thereby committed an offence punishable under section 138 of Negotiable Instruments Act.

4. The trial court, after considering the rival contentions raised on either side, has dismissed the complaint. Against the dismissal order passed by the trial Court, the present Criminal Appeal has been filed at the instance of the complainant as appellant.

5. Even though this Criminal Appeal has been posted today either for disposal on merits or dismissal, the learned counsel appearing for the respondent has not made his appearance. Under such circumstances, present Criminal Appeal is disposed of on merits on the basis of contentions put forth on the side of the appellant.

6. The learned counsel appearing for the appellant has contended that both the complainant and accused are having business transaction in respect of thread and on 29.12.1999, the accused is bound to pay Rs.89,600/- to the complainant and for the purpose of discharging the same, on 21.1.2000 the cheque in question has been given in favour of the complainant and the same has been presented in concerned Bank and the concerned bank has returned the same stating "funds insufficient" and subsequently, a statutory notice has been given to the accused and even after receipt of the same, the accused has not discharged her liability and thereby committed an offence punishable under section 138 of Negotiable Instruments Act and even though on the side of the complainant, replete documentary evidence has been adduced, the trial Court 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.

7. The entire case of the complainant hinges upon Ex.P.3. Ex.P.3 is a receipt, which stands in the name of one Radhakrishnan, wherein, the amount in question has been mentioned. The learned counsel appearing for the appellant/complainant has contended that Ex.P.3 has become emerged only in respect of the business transaction alleged to have taken place in between the complainant and accused and on that basis, the cheque in question has been given by the accused.

8. As stated earlier, Ex.P.3 has been given by the said Radhakrishnan. In fact, no signature of the accused is found therein. Since in Ex.P.3 signature of the accused does not find place, the Court cannot come to a conclusion that Ex.P.3 has come into existence only in respect of the alleged business transaction, which has happened in between the complainant and accused. Therefore, it is quite clear that the complainant has not discharged his initial burden.

9. The consistent case of the complainant is that by virtue of Ex.P.3, the accused has admitted her liability and due to that, she has given the cheque in question for discharging her liability and since there is no sufficient fund in her account, she committed an

offence punishable under section 138 of Negotiable Instruments Act.

10. It is a settled principle of law that as per Section 138 of Negotiable Instruments Act, 1881, the cheque in question must be only in respect of an enforceable debt. In the instant case, the complainant has not discharged his initial burden to the extent that Ex.P.3 has become emerged in respect of the business transaction alleged to have taken place in between the complainant and accused. Therefore, it is quite clear that the cheque in question has not been given in relation to an enforceable debt. Since the cheque in question has not been given in relation to an enforceable debt, the Court cannot come to a conclusion that the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

11. The trial Court, after considering the rival contentions put forth on either side, has rightly found that the cheque in question has not been given in respect of an enforceable debt and ultimately dismissed the complaint. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions 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 dated 30.1.2004 passed in Calendar Case No.376 of 2000 by the Judicial Magistrate No.3, Salem is confirmed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

ajr

To :

- 1.Judicial Magistrate No.III, Salem
- 2.The Chief Judicial Maigstrate, Slaem.
- 3.The Section Officer, Criminal Section, High Court, Madras.

+1 cc to M/s.A.Nagarathinam, Advocate, sr.54017.

Crl.A.No.486 of 2004

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