

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.673 of 2015

V.Mangalavathi

... Appellant

vs.

M.Ganesamoorthy

... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal passed in CrI.A.No.27 of 2014 dated 8.9.2015 on the file of the Additional District and Sessions Court, Hosur, Krishnagiri District, by setting aside the well considered order of conviction passed by the learned Judicial Magistrate cum Fast Track court, Hosur in S.T.C.No.8 of 2012 dated 7.2.2013 by allowing the present Criminal Appeal.

For appellant : Mr.R.Jayaprakash

For Respondent : Mr.A.Balamurugan

JUDGMENT

The order of acquittal dated 8.9.2015 passed in Criminal Appeal No.27 of 2014 by the Additional District and Sessions Court, Krishnagiri 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 on the file of Judicial Magistrate, Fast Track Court, Hosur and the same has been taken on file in S.T.C.No.8 of 2012, wherein the present respondent has been shown as sole accused.

3. It is averred in the complaint that the accused is a friend of the complainant and on 25.8.2011, the accused has approached the complainant and requested her to give a sum of Rs.5 Lakhs by way of debt. The complainant has given the same to the accused and on the same day, he has given the cheque in question. On 30.11.2011, the same has been presented in the concerned bank, but the concerned bank has returned the same stating "funds insufficient". Subsequently, on 7.12.2011, 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 under the said circumstances, the accused has committed an offence punishable under section 138 of Negotiable Instruments Act, 1881.

4. The trial court, after considering the divergent contentions raised on either side, has found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act, 1881 and sentenced to undergo six months simple imprisonment and also imposed compensation of Rs.4,70,000/- to the complainant. Against the conviction and sentence passed by the trial court, the accused as appellant has preferred Criminal Appeal No. 27 of 2014 on the file of the first appellate court.

5. The first appellate court, after hearing arguments of both sides and upon reappraising the available evidence on record, has allowed the appeal and set aside the conviction and sentence passed by the trial court and ultimately dismissed the complaint. Against the dismissal order passed by the first appellate court, present Criminal Appeal has been preferred at the instance of the complainant as appellant.

6. The learned counsel appearing for the appellant/complainant has contended that on 25.8.2011, the accused has approached the complainant for getting a sum of Rs.5 Lakhs by way of loan and the same has been given to him and on the same day, he has given the cheque in favour of the complainant and the same has been presented in the concerned bank on 30.11.2011, but the concerned bank has returned the same stating "funds insufficient" and subsequently, 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 the trial court, after considering the evidence available on the side of the complainant, has rightly found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act, 1881, but the first appellate court, without considering the fact that no documentary evidence is available on the side of the accused for the purpose of proving that the complainant has run a chit, erroneously acquitted the accused and therefore, the order of acquittal passed by the first appellate court is liable to be set aside and the judgment passed by the trial court is liable to be restored.

7. The learned counsel appearing for the respondent/accused has contended that before filing complaint, the complainant has given a statutory notice, wherein it has been clearly mentioned to the effect that she has received the amount as hand loan from her friend so as to advance the amount mentioned in the complaint to the accused, whereas the complainant has been examined as P.W.1 and her specific evidence is that by way of selling her jewels, she has kept the amount in question in the house and further a cheque has been given in the name of husband

of the defacto complainant (P.W.2) and the same has been encashed and the trial court, without considering the nature of the defence taken on the side of the accused, has erroneously found him guilty under section 138 r/w 142 of Negotiable Instruments Act, 1881 and the first appellate court, after considering the fact that the cheque in question is not supported by consideration and the same has not been given in connection with legally enforceable debt, has rightly dismissed the complaint and therefore, the dismissal order passed by the first appellate court need not be set aside.

8. The consistent case put forth on the side of the appellant/complainant is that on 25.8.2011, the accused has received a sum of Rs.5 Lakhs from the complainant and to that extent, he has given the cheque in question in favour of the complainant.

9. The complainant has been examined as P.W.1 and her specific evidence is that except the transaction mentioned in the complaint, no other transaction has been in existence between her and accused. The husband of the defacto complainant has been examined as P.W.2 and he has also deposed to the effect that except the transaction mentioned in the complaint, no other transaction has been in existence in between him and accused.

10. At this juncture, it would be more useful to look into Ex.D.1 Statement of the accused, wherein it has been clearly mentioned that on 13.10.2011, Rs.40,000/- has been withdrawn by the husband of the complainant (P.W.2).

11. On the side of the appellant/complainant, an inert attempt has been made to the effect that with regard to transaction mentioned in the complaint, a Panchayat has been convened and only on the basis of its decision, Rs.40,000/- has been given to P.W.2. In fact, this Court has perused the entire averments made in the complaint, wherein no mention has been made to the effect that on 13.10.2011, a Panchayat has been convened and only on the basis of its decision, a cheque has been given by the accused in favour of P.W.2. Since no necessary averments have been made in the complaint, it is needless to say that the contention put forth on the side of the appellant/complainant with regard to Rs.40,000/- cannot be accepted.

12. Before filing the present complaint, a statutory notice has been issued by the complainant and a copy of the same has been marked in Ex.P.4, wherein at Paragraph No.2, it is clinchingly mentioned to the effect that the complainant has received a hand loan of Rs.5 Lakhs from her friend and given the same to the accused.

13. As pointed out earlier, the complainant has been examined as P.W.1 and her specific evidence is that only by way of selling her jewels for the purpose of purchasing lands, she kept the amount in question in her house. Since the averment made in Ex.P.4 is totally contra to the evidence given by P.W.1, it is very clear that on the side of the complainant, inconsistent pleas have been raised. The defence put forth on the side of the accused is that the complainant has used to run a chit, wherein the accused has become one of its subscribers. Under the said circumstances, the cheque in question has been given to the complainant.

14. Considering the fact that on 13.10.2011, a sum of Rs.40,000/- has been given to the husband of the complainant, P.W.2, by the accused and the same has been withdrawn and also considering that with regard to source of money, no consistent evidence is available on the side of the complainant, the defence put forth on the side of the accused can very well be accepted.

15. The trial court, without considering the payment of Rs.40,000/- made on 13.10.2011 in favour of P.W.2 and also without considering that on the side of the complainant with regard to source of money, no consistent evidence is available, has erroneously found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act, 1881. But, the first appellate court, after considering the vital infirmities found on the side of the complainant, has rightly found that the cheque in question has not been given in connection with legally enforceable debt. In view of the discussions made earlier, this Court has not found any merit 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 of acquittal dated 8.9.2015 passed in CrI.A.No.27 of 2014 by the first appellate court is confirmed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ajr

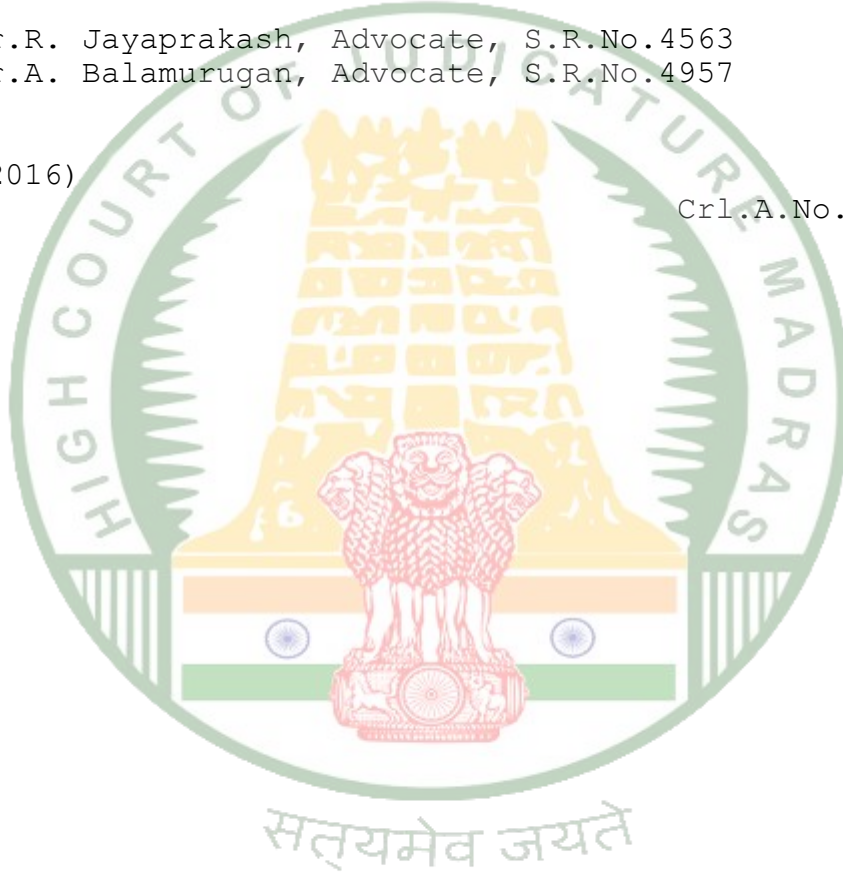
To :

1. The Additional District and Sessions Court,
Hosur, Krishnagiri District,
2. Judicial Magistrate cum Fast Track court, Hosur
3. The Public Prosecutor, High Court, Chennai

+lcc to Mr.R. Jayaprakash, Advocate, S.R.No.4563
+lcc to Mr.A. Balamurugan, Advocate, S.R.No.4957

SVI (CO)
EU(03/02/2016)

Crl.A.No.673 of 2015



WEB COPY