

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.137 of 2009

S.Rajaramaswamy

... Appellant

V.Senthilkumar

vs.

... Respondent

Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment of the lower appellate Court in C.A.No.183 of 2006 on the file of Principal Sessions Court at Erode dated 21.6.2007 and to restore the conviction and sentence passed by the trial court in C.C.No.485 of 2004 dated 19.5.2006 on the file of the Judicial Magistrate No.3, Erode.

For appellant : Mr.A.K.Kumaraswamy

For Respondent : Mr.V.Manokaran

JUDGMENT

The order of acquittal passed in Criminal Appeal No.183 of 2006 by the Principal District and Sessions Court, Erode is being challenged in the present Criminal Appeal.

2. The appellant herein, as complainant, has filed a complaint under section 138 r/w 142 of Negotiable Instruments Act, 1881 on the file of Judicial Magistrate No.3, Erode and the same has been taken on file in Calendar Case No.485 of 2004, wherein the present respondent has been shown as sole accused.

3. In the complaint, it is averred that on 9.3.2003 to meet out urgent expenses of the accused, he received a debt of R.2,19,000/- from the complainant and in order to discharge the same, he has given a cheque and the same has been put into the concerned bank for collection, 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, but he has given a false reply notice. Under the said circumstances, he has committed an offence punishable under section 138 r/w 142 of Negotiable Instruments Act.

4. The trial court, after considering the available evidence on record, has found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act, 1881 and awarded sentence as mentioned in the judgment. Against the conviction and sentence passed by the trial court, the accused has preferred Criminal Appeal No.183 of 2006 on the file of the first appellate court. The first appellate court, after hearing arguments of both sides and upon reappraising the evidence available on record, has found that the complainant has not established to the effect that the cheque in question has been given in connection with legally enforceable debt and ultimately allowed the appeal and thereby dismissed the complaint. Against the order of dismissal, present Criminal Appeal has been preferred at the instance of the complainant as appellant.

5. The learned senior counsel appearing for the appellant/complainant has contended to the effect that on 9.3.2003, the accused has received a sum of Rs.2,19,000/- from the complainant and in order to discharge the same, he has given the cheque in question in favour of the complainant and the same has been put into the concerned bank, 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, but he has given a false reply notice and the trial court, after considering the rival contentions put forth on either side, has rightly found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act. But, the first appellate court, without reappraising the evidence available on record, has erroneously dismissed the complaint and therefore, the order of acquittal passed by the first appellate court is liable to be set aside and the respondent/accused has to be mulcted with liability.

6. The learned counsel appearing for the respondent/accused has contended that during the relevant period, the complainant has served as one of the members of Stock Exchange Society in Coimbatore District and the accused has been appointed as an Assistant for the purpose of collection and at that time, as a security, he has been forced to give a blank cheque and accordingly he has given a blank cheque to the complainant and by utilizing the same, present complaint has been filed and the trial court, without considering the nature of defence put forth on the side of the accused, has erroneously found the accused guilty under section 138 r/w 142 of Negotiable Instruments Act, but the first appellate court has rightly acquitted the accused and therefore, the order of acquittal passed by the first appellate court need not be set aside.

7. The cheque in question has been marked as Ex.P.1. The

reply notice alleged to have been given by the accused has been marked as Ex.P.7, wherein it has been clearly stated to the effect that as a security, an unfilled cheque has been given to the complainant by the accused. Nowhere in Ex.P.7, it is stated to the effect that a signed blank cheque has been given to the complainant. Therefore, it is quite clear that on the side of the accused, the signature found in Ex.P.1 has not been admitted. Under the said circumstances, primary duty is cast upon the complainant to prove that the signature found in Ex.P.1 is the signature of the accused, but the same has not been done. On that score alone, the complaint in question is liable to be thrown out.

8. The specific defence put forth on the side of the accused is that during the relevant period, he has served as an Assistant of the complainant and for the purpose of giving security, the cheque in question has been given in blank form and subsequently filled up.

9. Considering the averments made in reply notice and also considering the fact that the signature found in Ex.P.1 has not been established to the effect that it is the signature of the accused, the defence put forth on the side of the accused can easily be accepted.

10. The present complaint has been filed under section 138 r/w 142 of Negotiable Instruments Act, 1881. Under the said circumstances, the complainant has to establish that that the cheque in question has been given in connection with legally enforceable debt. In the instant case, as pointed out earlier, the complainant has not proved that the signature found in Ex.P.1 is the signature of the accused and further, the defence taken on the side of the accused can easily be accepted. Under the said circumstances, it is needless to say that the complainant has not established that Ex.P.1 has been given in connection with legally enforceable debt. Since Ex.P.1 has not been given with regard to legally enforceable debt, this Court cannot come to a conclusion that the accused has committed an offence punishable under section 138 r/w 142 of Negotiable Instruments Act.

11. The trial court, without considering the averments made in the reply notice (Ex.P.7) and also without considering the nature of the defence put forth on the side of the accused, has erroneously found the accused guilty under section 138 of Negotiable Instruments Act, but the first appellate court has rightly dismissed the complaint. In view of the discussions

made earlier, this Court has not found any 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 judgment passed by the first appellate court in Criminal Appeal No.183 of 2006 dated 21.6.2007 is confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Principal Sessions Court at Erode
2. The Judicial Magistrate No.3, Erode.
3. The Chief Judicial Magistrate, Erode.

+1cc to Mr.A.K. Kumarasamy, Advocate, S.R.No.3142

+1cc to Mr.N. Manokaran, Advocate, S.R.No.3225

NM(CO)

EU(8/02/2016)

Cr1.A.No.137 of 2009

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