

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.01.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.A.No.225 of 2009

J.Jerald Vivera

... Appellant/Complainant

Vs.

David Manoharan

... Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C. to call for the entire records in C.A.No.389 of 2008, on the file of the Additional District and Sessions Court, Coimbatore and set aside the judgment dated 3.2.2009 and conform the judgment dated 6.11.2008 passed by the Judicial Magistrate No.II, Coimbatore in C.C.No.594 of 2007

For Appellant : Mr.A.S.Balaji for
Mr.Thanjai P.N.Chezhian

For Respondent : Mr.C.D.Johnson

JUDGMENT

This criminal appeal has been directed against the judgment passed in Crl.A.No.389 of 2008, by the Additional District and Sessions Court, Coimbatore.

2. The appellant herein, as complainant, has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, on the file of the Judicial Magistrate Court No.2, Coimbatore and the same has been taken on file in Calendar Case No.594 of 2008, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that the complainant knows the accused for a period of five years. On 10.1.2007, the accused has received a sum of Rs.3,72,000/- from the complainant by way of debt and promised to discharge the same within a period of three months and on the same day, he has given a cheque in favour of the complainant for the said sum

of Rs.3,72,000/- and the same has been put into the concerned bank. The concerned bank has returned the same stating 'account of the accused has already been blocked'. Under the said circumstances, a statutory notice has been given and even after receipt of such statutory notice, the accused has not discharged his liability and therefore, he committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

4. The trial Court, after considering the contentions put forth on either side, has found the accused guilty under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment as mentioned in the judgment. Against the conviction and sentence passed by the trial Court, the accused, as appellant, has preferred a Criminal Appeal No.389 of 2008, on the file of the first appellate Court.

5. The first appellate Court, after hearing arguments of both sides and upon re-appraising the available evidence on record, has allowed the appeal and thereby set aside the conviction and sentence passed by the trial Court and ultimately dismissed the complaint. Against the judgment passed by the first appellate Court, the 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 10.01.2007, the accused has received a sum of Rs.3,72,000/- by way of debt from the complainant and promised to discharge the same within a period of three months and on the date of borrowing, he has given the cheque in question in favour of the complainant and the same has been presented in the concerned bank, but the concerned bank has returned the same stating that the account of the accused has already been blocked and subsequently, a statutory notice has been given and even after receipt of the same, the accused has not discharged his liability and thereby, he committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and for the purpose of receiving loan as well as issuance of the cheque in question, on the side of the complainant, replete evidence is available and the trial Court has rightly found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881, but the first appellate Court has assigned some reasons for dismissing the complaint and the findings given by the first appellate Court are totally incorrect and therefore, the judgment passed by the first appellate Court is liable to be set aside.

7. The learned counsel appearing for the respondent/accused has contended that the cheque in question has not been given in favour of the complainant and the same has been given in favour of one Philip and further, so many material alterations are found place in the cheque in question and further, the cheque in question has been presented on 12.01.2007 and the first appellate Court, after considering the material alterations found in the cheque in question and also after considering the fact that no occasion has arisen on the part of the accused to issue the cheque in question, even on the date of alleged borrowal, has rightly dismissed the complaint and therefore, the judgment passed by the first appellate Court need not be set aside.

8. For considering the rival submissions made on either side, the Court has to look into Ex.P1, the cheque in question and also the averments made in the complaint.

9. In the complaint it has been specifically stated that on 10.01.2007, the accused has received a sum of Rs.3,72,000/- by way of debt from the complainant and promised to discharge the same within a period of three months. The cheque in question has been given on the same day.

10. On the side of the complainant, the cheque in question has been marked as Ex.P1, wherein it is clearly seen that Ex.P1 has been given in the name of Philip and subsequently, certain corrections have been made and in order to endorse the said corrections, the alleged two signatures of the accused are found place. In fact, this Court has compared the signature of the accused found in Ex.P1 with his alleged signatures, so as to endorse the corrections made in it and ultimately found that the alleged signatures of the accused are not tallied with his signature found in Ex.P1. Further in Ex.P1, even in the amount, some material alterations have been made. Since even in the amount, some material alterations have been made and no explanation has been given on the side of the complainant, it is needless to say that the cheque in question has not been given in connection with a legally enforceable debt. Further, on the reverse side of Ex.P1, the date 12.01.2007 is found place and with regard to that aspect also, no explanation has been given on the side of the complainant.

11. Even assuming without conceding that even on the date of receipt of money, Ex.P1 has been given to the complainant by the accused, since on the side of the complainant, with

regard to material alterations of amount mentioned in Ex.P1, no explanation has been given and since the alleged signatures of the accused so as to encrust the endorsements are not at all the signatures of the accused, it is very clear that the complainant has not established the fact that Ex.P1 has been given in connection with a legally enforceable debt.

12. The trial Court, without considering the vital infirmities found on the side of the complainant, has erroneously found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881. But the first appellate Court has rightly found the vital infirmities found on the side of the complainant and dismissed the complaint. In view of the discussion made earlier, 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 judgment passed in Crl.A.No.389 of 2008 by the Additional District and Sessions Court (Fast Track Court No.2), Coimbatore, is confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk
To

- 1.The Additional District and Sessions Judge,
(Fast Track Court 2),Coimbatore
- 2.The Judicial Magistrate No.II,
Coimbatore
- 3.Do Through The Chief Judicial Magistrate,
Coimbatore.
- 4.The Public Prosecutor,
High Court.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.3176

+1cc to Mr.Thanjai P.N.Chezhian, Advocate, S.R.No.3308

Crl.A.No.225 of 2009

KK(CO)
CA(29/01/2016)