IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.116 of 2007

Ramanathan ... Appellant

Vs.

1. The Anna Paper Containers Company
   Post Box No.2
   Munigoor
   Chalakkudi (via)
   State of Kerala - 680 316

2. TESSY JOHNSON
   Proprietor
   The Anna Paper Containers Company
   Post Box No.2
   Munigoor
   Chalakkudi (via)
   State of Kerala - 680 316 ... Respondents

Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973 against the judgment passed by the Judicial Magistrate No.I, Coimbatore, Coimbatore District dated 26-06-2006 in C.C.No.737 of 2004.

For appellant :: Mr. S.N. Kirubanandam
For respondent :: Mr. N. Sethuraghavan
for Mr. Rajnish Pathiyil

ORDER

The dismissal order dated 26-06-2006 passed in C.C.No.737 of 2004 by the Judicial Magistrate No.I, Coimbatore is being challenged in the present criminal appeal.

2. The appellant herein as complainant has filed the complaint under Section 138 of the Negotiable Instruments Act, 1881 and the same has been taken on file in C.C.No.737 of 2004 wherein the present respondent has been shown as the accused.

3. It is averred in the complaint that the second accused is the Proprietor of the first accused. On 17-02-2004, the

second accused on behalf of the first accused has received a sum of Rs.1,50,000/- (Rupees One lakh and fifty thousand only) by way of debt and in order to discharge part of the amount, on 17-05-2004, the second accused has given a cheque in the name of the first accused for a sum of Rs. 1,10,000/-(Rupees One lakh ten thousand only) in favour of the complainant and the same has been put into concerned Bank for collection. The concerned Bank has returned the same stating "Funds Insufficient" and subsequently, a statutory notice has been issued and even after receipt of same, the accused have not discharged their liability and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act.

4. The Trial Court after considering the available evidence on record has dismissed the complaint 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/complainant has contended that on 17-02-2004, the second accused on behalf of the first accused has received a sum of Rs.1,50,000/-(Rupees One lakh and fifty thousand only) by way of debt from the complainant and in order to make partial discharge. On 17-05-2004, the second accused on behalf of the first accused has given yhe 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 statutory notice has been issued and even after receipt of the same, the accused have not discharged their liability. Under the said circumstances, the present complaint has been filed and on the side of the complainant, enormous evidence have been let in for the purpose of proving the culpability of the accused and the Trial Court without considering the evidence available on the side of the complainant has erroneously dismissed the complaint and therefore, the dismissal order passed by the Trial Court is liable to be set aside.

6. Per contra, the learned counsel appearing for the respondents/accused has also equally contended that even in the year 2001, proper intimation has been given to the concerned Bank to stop payment of the cheque in question along with other cheques and therefore, the cheque in question has not been issued on 17-05-2004 and the Trial Court after considering the nature of defence put forth on the side of the accused has rightly dismissed the complaint and therefore, the dismissal order passed by the Trial Court does not call for any interference.

7. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the cheque in question has been given on 17-05-2004 for a sum of Rs.1,10,000/-(Rupees One Lakh Ten thousand only) as a partial discharge?

8. For considering the divergent submissions, the Court has to look into the evidence given by the concerned Manager of the Bank who has been examined as D.W.1 and his specific evidence is that on 31-12-2001, the second accused has given a memo to stop payment of certain cheques including the cheque in question. Considering the fact that even in the year 2001, the second accused has given such kind of memo, it is highly impossible on the side of the second accused to give the cheque in question in the year 2004. Therefore, it is quite clear that the cheque in question is not supported by consideration and the same cannot be given with regard to an enforceable debt and the Trial 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, the criminal appeal is dismissed. The dismissal order passed in C.C.No.737 of 2014 by the Judicial Magistrate, Coimbatore is confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Coimbatore.

2.-Do- Thro the Chief Judicial Magistrate,
Coimbatore.

+1cc to M/S Rajnish Patniyil, Advocate sr.531

Criminal Appeal No.116 of 2006

mg(CO)
srg(19/01/2016)