

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.01.2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Crl.A.No.603 of 2009

V.M.Ravi Chellmuthu .. Appellant
Vs.

K.Logu @ Loganathan ... Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C. to set aside the order of acquittal dated 04.08.2009 made in C.A.No.30 of 2009 on the file of the Additional District Court/Fast Track Court No.1, Erode and restore the conviction imposed by the trial Court on 28.1.2009 in C.C.No.364 of 2007, on the file of the Judicial Magistrate No.2, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.N.Manoharan

JUDGMENT

This criminal appeal has been directed against the judgment passed in Crl.A.No.30 of 2009, by the Additional District and Sessions Court/Fast Track Court, No.I, Erode.

2. The appellant herein, as complainant, has filed a complaint under Section 138 r/w. Section 142 of the Negotiable Instruments Act, 1881, on the file of the Judicial Magistrate Court No.2, Erode and the same has been taken on file in Calendar Case No.364 of 2007, wherein, the present respondent has been shown as sole accused.

3. It is averred in the complaint that the accused has received a sum of Rs.80,000/- from one M.Ravi by way of debt and in order to discharge the same, two post dated cheques have been issued by the accused in favour of the said M.Ravi and subsequently, the said Ravi has received the amount from the complainant and made over the cheques in his favour. The cheques in question have been presented in the concerned bank and 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 and thereby committed an offence punishable under Section 138 r/w. Section 142 of the 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. Section 142 of the Negotiable Instruments Act, 1881, 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.30 of 2009, on the file of the Additional District and Sessions Court-Fast Track Court, No.1, Erode.

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 acquitted the accused. 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 with great vehemence that the accused has received a sum of Rs.80,000/- from one M.Ravi by way of debt and in order to discharge the same, he has given the cheques in question in favour of the said M.Ravi and subsequently, the said Mr.Ravi, after receipt of the amount mentioned in the cheques from the accused, has made over the cheques in question in favour of the complainant and thereafter, the same have 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 and the trial Court, after considering the evidence available on record, has rightly found the accused guilty under Section 138 r/w. Section 142 of the Negotiable Instruments Act, 1881, but the first appellate Court, without considering the evidence available on the side of the prosecution, has erroneously dismissed the complaint and therefore, the judgment passed by the first appellate Court is liable to be set aside and the accused is liable to be mulcted with liability under Section 138 of the Negotiable Instruments Act, 1881.

7. The learned counsel appearing for the respondent/accused has contended that in the instant case on the side of the appellant/complainant, the transaction alleged to have been entered into between the said M.Ravi and accused has not at all been established and since the said aspect has not been established, the Court cannot come to a conclusion that the cheques in question have been issued in connection with a legally enforceable debt and the trial Court, without considering the above legal aspect, has erroneously found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881. But the first appellate Court has rightly dismissed the complaint and therefore, the

judgment passed by the first appellate Court does not call for any interference.

8. The consistent case put forth on the side of the appellant/complainant is that the accused has received a sum of Rs.80,000/- from the said M.Ravi and in order to discharge the same, the accused has given the cheques in question, each for a sum of Rs.40,000/- and after some time, the said M.Ravi, after receipt of the amount mentioned in the cheques from the accused, has made over the same in favour of the complainant.

9. As rightly pointed out on the side of the respondent/accused, on the side of the complainant, the said M.Ravi has not been examined for the purpose of proving that the accused has received a sum of Rs.80,000/- from him and also for the purpose of discharging the same, the cheques in question have been issued. Since the vital aspects have not been established on the side of the appellant/complainant, the Court cannot automatically come to a conclusion that the cheques in question have been issued in favour of M.Ravi only in respect of legally enforceable debt.

10. It is an everlasting principle of law that as per Section 138 of the Negotiable Instruments Act, 1881, the cheque in question must be given only in respect of a legally enforceable debt. In the instant case, as pointed out earlier, the transaction alleged to have been entered into between M.Ravi and accused has not at all been established. Since on the side of the complainant, the said vital facts have not been established, it is very difficult to come to a conclusion that the cheques in question have been issued in connection with a legally enforceable debt.

11. The trial Court, without considering the above legal aspects, has erroneously found the accused guilty under Section 138 of the Negotiable Instruments Act, 1881. But the first appellate Court, after considering the lack of evidence on the side of the appellant/complainant, has rightly dismissed the complaint. In view of the discussion made earlier, this Court has not found any acceptable 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 CrI.A.No.30 of 2009 by the Additional District and Sessions Court (Fast Track Court No.1), Erode, is confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

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To

1.The Additional District and Sessions Court,
(FTC No.1)
Erode.

2.The Judicial Magistrate No.II, Erode.

3. -do- Through The Chief Judicial Magistrate, Erode.

+1cc to Mr.M. Guruprasad, Advocate, S.R.No.3396
+1cc to Mr.N. Manoharan, Advocate, S.R.No.3226

(CO)
EU(25/01/2016)

Cr1.A.No.603 of 2009



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