IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.11.2016

Coram:

THE HON'BLE Mr.JUSTICE P.VELMURUGAN

Crl.A.No.458 of 2013

M.Munuswamy ..Appellant

Vs.

Smt.Jayanthi ..Respondent

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against Judgment of Acquittal passed in C.C.No.120 of 2004 dated 05.04.2013 on the file of the Learned Judicial Magistrate No.I, Chengalpet.

For Appellant : Mr.Rajesh Kannan

For Respondent : M/s.N.Raja Senthoor Pandian and C.Subramanian

J U D G M E N T

The present Criminal Appeal is filed against the Judgment dated 05.04.2013 made in C.C.No.120 of 2004 passed by the Learned Judicial Magistrate No.I, Chengalpet.

2. The case of the appellant/complainant is that on 17.11.2003, the respondent/accused borrowed a sum of Rs.50,000/- from the complainant and executed a promissory note for the same. Again on 03.11.2003, the accused borrowed a sum of Rs.1,10,000/- and issued a post dated cheque for sum of Rs.1,60,000/- and took back the promissory note executed for a sum of Rs.50,000/-. The accused requested the complainant to present the cheque after a month so that she could arrange for the money. Accordingly, the complainant presented the cheque on 12.03,2004, but to his shock and surprise, the said cheque was returned with an endorsement "payment stopped by the drawer". The complainant issued the statutory notice as contemplated u/s.138 of the Negotiable Instruments Act, on 13.03.2004 and the same was received by the accused on 16.03.2004. The statutory notice was issued by the complainant to the accused stating about dishonour of the cheques issued by him in favour of him for the reason "insufficient of funds" in his bank account. Despite that, he has not complied with the demand made

in the statutory notice issued to him. Hence, the complainant had filed complaint before the Judicial Magistrate No.I at Chengalpattu for order of payment of compensation and interest along with cheque amount. After enquiry, the trial court without considering the merits on the complaint, simply dismissed the complaint and acquitted the accused. Aggrieved with the judgment of acquittal, the complainant has preferred the present appeal.

3. The learned counsel for the appellant would submit that the respondent executed a cheque in favour of the appellant for discharging the legally enforceable debt. The respondent has also never disputed the execution of the cheque and the signature found in the cheque. The learned counsel would further submit that the trial Judge miserably failed to appreciate the complaint filed by the complainant and acquitted the accused. Though a statutory notice was issued by the complainant to the accused stating about the dishonour of the cheque issued by her in favour of the appellant for the reason, insufficient of funds in her bank account, it was purposely returned by the accused as unclaimed. The learned counsel would further submit that the act of the accused would clearly show the malafide intention of the accused and even, if the notice sent to the accused is unclaimed, it is deem to be served on the accused person.

4. The learned counsel for the appellant would further submit that the appellant has produced Income Tax Returns and the same have been marked as Ex.D6, D7 and D8. But the trial court without looking into all these aspects had simply dismissed the complaint and acquitted the accused. Hence, the order passed by the trial court dated 05.04.2013 is liable to be set aside.

5. Heard the learned counsel appearing for the appellant and the learned counsel for the respondent.

6. On perusal of the entire records and also judgment of the trial court, in para - 15 of the judgment, the trial court simply has stated in one line that as per the order of this court, PW1 has not submitted his entire Income Tax Report hence it is decided against the complaint. Even the trial court has not discussed about veracity of Exs.D6, D7 & D8 and has not pointed about the defect in the IT Report Therefore, this court finds that the trial court without discussing the validity of the Ex.D6, D7 and D8 simply has stated it is decided as per order of this court dated 21.02.2012. The approach of the learned Magistrate is not correct in deciding the case.

7. Considering the facts and circumstances of the case, this Court is of the view that the matter has to be remanded back to the trial court for fresh consideration. Accordingly, the order passed by the Learned Judicial Magistrate No.I, Chengalpet, dated 05.04.2013 made in C.C.No.120 of 2004 is set aside and the matter is remanded back to the trial court and the trial court is directed to dispose of the case within a period of four weeks from the date of receipt of a copy of this order. If it is necessary, the trial court is directed to give opportunity to the complainant to lead evidence only with reference to Income Tax returns and decide the matter in accordance with law.

Accordingly, the Criminal Appeal is disposed of.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The Learned Judicial Magistrate No.I,
Chengalpet.

Crl.A.No.458 of 2013

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