

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.A.Nos.547, 551, 550 and 553 of 2014

K.Raju @ Raji

... Appellant
in all appeals/Complainant

Vs

G.Gunasekaran

... Respondent in
in all appeals/Accused

Prayer:- Criminal Appeals filed under Section 378 (4) of the Code of Criminal Procedure to set aside the orders dated 13.08.2014 in Crl.A.Nos.145, 148, 146 and 147 of 2011 on the file of the learned I Additional District and Sessions Judge, Vellore, in C.C.Nos.165, 168, 166 and 167 of 2008, vide order dated 20.06.2011 on the file of the learned Judicial Magistrate No.I, Vellore, Vellore District.

For Appellant : Mr.M.Sathish Kumar

For Respondent : Mr.D.Senthil
for Mr.N.Sudarsen

COMMON ORDER

For the sake of convenience, the petitioner and the respondent will be referred to as the complainant and the accused, respectively.

2.It is the case of the complainant that he is engaged in real estate business and that the accused approached and represented to him that the accused has entered into a Sale Agreement with one Mohamed Ismail and his wife A.K.Janutheen Bee, for purchase of 4 acres and 0.92 cents of lands; and that the accused agreed to sell the said lands to the complainant and entered into a Sale Agreement dated 06.06.2007 for Rs.1,47,60,000/-, towards which, the complainant paid Rs.25,00,000/- in two installments of Rs.15,00,000/- and Rs.10,00,000/-, respectively.

3.It is the further case of the complainant that the accused did not take any steps to sell the lands in question and therefore, the complainant started demanding the return of the money. When the accused did not return the money, the complainant lodged a complaint in Arcot Police Station. During the enquiry by the Inspector of Police, the accused gave four post-dated cheques on 21.12.2007 for Rs.5,00,000/- each. The complainant presented one cheque on 31.01.2008 and other three cheques on 13.02.2008. All the four cheques were dishonoured by the Bank for insufficient funds. Hence, the complainant issued statutory notice dated 28.02.2008 to the accused calling upon him to pay the amount due under the cheques within fifteen days. The accused did not receive the notice and the returned notice was marked as Ex.P.5. Hence, the complainant filed four complaints in C.C.Nos.165, 166, 167 and 168 of 2008 before the learned Judicial Magistrate No.I, Vellore, against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act. On receipt of summons, the accused appeared and he was questioned about the substance of accusation, which he denied.

4.To prove the case, the complainant examined himself as PW1. He also examined one Vijaya Kumar as PW2. Five exhibits were marked on behalf of the complainant. When the accused was questioned under Section 313 of the Code of Criminal Procedure, about the incriminating circumstances, he denied the same. On behalf of the accused, neither any witnesses were examined nor any exhibits were marked.

5.After considering the evidence adduced by the complainant and hearing arguments on either side, the trial Court convicted the accused for offence under Section 138 of the Negotiable Instruments Act, in each case and sentenced him to undergo six months rigorous imprisonment in each case.

6.Challenging the convictions and sentences, the accused filed four Criminal Appeals namely, C.A.No.145, 146, 147 and 148 of 2011, in which the learned I Additional District and Sessions Judge, Vellore, by orders dated 13.08.2014, allowed all the four appeals and acquitted the accused. Challenging which, the complainant is before this Court.

7.Heard Mr.Sathish Kumar, learned counsel appearing for the appellant/complainant and Mr.D.Senthil, learned counsel appearing for the accused/respondent.

8.It may be necessary to extract the following passage from the Judgment of the Hon'ble Supreme Court in Arulvelu and another Vs. State represented by the Public Prosecutor and

another (2009) 10 Supreme Court Cases 206.

"36.Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial Court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial Court is either perverse or wholly unsustainable in law."

9.It is the specific case of the complainant that he had entered into a Sale Agreement dated 06.06.2007 with the accused for purchase of certain lands, that too did not belong to the accused, but belonged to one Mohamed Ismail and his Wife Janutheen Bee. The complainant knew that the accused was only an Agreement Holder of Mohamed Ismail and Janutheen Bee. In the cross-examination of the complainant, he has admitted that the accused had shown only a Receipt only for having given Rs.10,00,000/- to Mohamed Ismail and Janutheen Bee, as advance for the said lands. Thus, the accused was not even having any written agreement with Mohamed Ismail and Janutheen Bee for purchase of the lands in question. That apart, the complainant did not even mark the Sale Agreement dated 06.06.2007, that was entered into with the accused as an Exhibit during the trial.

10.Mr.Sathish Kumar, learned counsel appearing for the complainant submitted that a photocopy was filed in the trial Court and the accused had used the said photocopy for cross examining the complainant.

11.Learned counsel appearing for the complainant further submitted that the original agreement was handed over by the complainant to the police in connection with the criminal cases, that has been registered against the accused in respect of the present transaction and therefore, the complainant was not able to mark the original agreement in the trial Court.

12.In the opinion of this Court, the complainant should have deposed in the witness box that the original agreement is available with the Police and should have proved the transaction by marking the photocopy of the Agreement, which he did not do. It is the admitted case of the complainant that the accused gave the impugned cheques during police investigation. Even in the four private complaints, in Para 3, the complainant has stated as follows:

"3.The complainant submit that he approached the Superintendent of Police on 10.12.2007 and informed him about the cheating perpetrated by the accused and the Superintendent of Police advise the complainant to meet the Inspector of Police, Arcot Town, for further remedy. The accused was called to the Arcot Police Station and the accused has accepted the liability and issued four post-dated cheques on 21.12.2007 namely, Cheque bearing No.170244 dated 21.01.2008 for Rs.5,00,000/- drawn on Indian Overseas Bank, Ranipet and three other cheques bearing Nos.170241, 170243 and 170245 drawn on Indian Overseas Bank, Ranipet Branch, each for Rs.5,00,000/- towards the discharge of legal liability."

13.In D.Venkatasubramaniam and others vs. M.K.Mohan Krishnamachari {(2009) 10 Supreme Court Cases 448}, the Hon'ble Supreme Court has deprecated the practice of using the police to obtain cheques for settling civil transactions. Para 24 of the said Judgment is as follows:

"24.Pursuant to the impugned order, the investigating authorities have approached the appellant No.1 (in S.L.P (Crl) No. 3269 of 2007), took him into custody and exhibited him on television channel. The police have demanded to pay an amount of Rs.2,28,00,000/- and threatened that he would be arrested if he fails to comply with their demand. Accordingly, the appellants have paid Rs.10 lakhs in cash in the police station itself and issued a cheque for an amount of Rs.2.18 cores drawn on Tamilnadu Mercantile Bank. However, the cheque was not encashed on account of the instructions to the bank to stop the payment in view of the interim order dated 4th May, 2007 of this Court. The police offered explanation stating that the matter was settled voluntarily between the parties and therefore, the accused were not arrested and remanded to custody. It is difficult to buy this idea that there was a settlement between the parties in the police station. It is not difficult to discern as to how and under what circumstances the appellants may have agreed to pay the amounts and also issued a cheque. It is not known as to how and under what authority the police could intervene

and settle any disputes between the parties. It is needless to observe that the police have no such authority or duty of settling disputes." (emphasis supplied).

14.Learned counsel appearing for the complainant submitted that the cheques were given voluntarily by the accused, which argument, this Court is not able to buy. That apart, neither in the complaint nor in the evidence of PW1, he has stated the dates on which, a sum of Rs.15,00,000/- and Rs.10,00,000/- were given by the accused.

15.In the cross examination, the complainant (PW1) has stated that he gave huge amount by cash. It appears to be improbable, because, admittedly, the complainant is engaged in real estate business and it sounds improbable for that the complainant would have given a huge sum of Rs.25,00,000/- by cash to the accused for purchase of lands, for which the accused did not have title.

16.The complainant knew that the lands belonged to Mohamed Ismail and his wife Janutheen Bee and not to the accused. All these aspects have been considered by the Appellate Court in acquitting the accused. As stated in Arulvelu (supra), when there are two views possible, the one that favours the accused, should merit acceptance. This Court does not find any perversity or illegality in the orders of acquittal passed by the Sessions Court, warranting interference.

In the result, these Criminal Appeals are dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

mps

To

1.The I Additional District and Sessions Judge,
Vellore.

2.do Thro'
The Principal Sessions Judge, Vellore.

3.The Judicial Magistrate No.I,
Vellore,
Vellore District.

4.The Chief Judicial Magistrate,
Vellore.

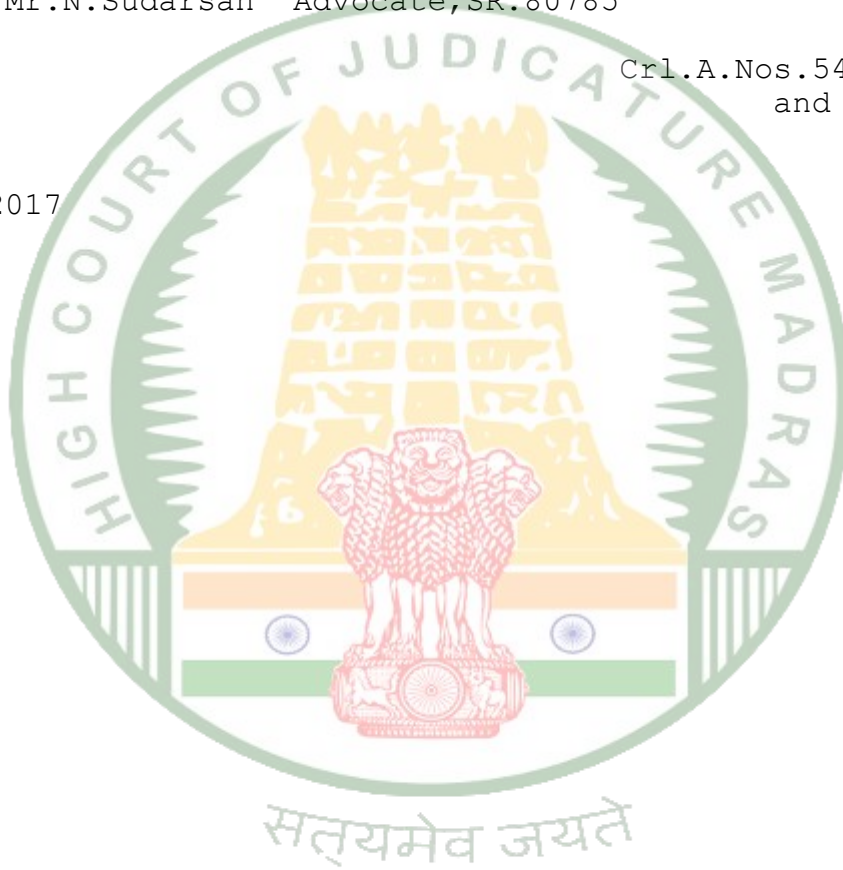
Copy to

The Section Officer,
Criminal Section Records,
High Court, Madras.

+ 1 cc to Mr.N.Sudarsan Advocate,SR.80785

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