

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.10.2017

PRONOUNCED ON: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Cr1.A.No.732 of 2015

R.Venkatesan

Appellant/Complainant

Vs

Shamsath Begam

Respondent/Accused

Prayer:- This Criminal Appeal is filed to set aside the judgement and order of the Additional District and Sessions Judge, Krishnagiri made in CA.No.38 of 2012, dated 14.8.2015, upholding the judgement of conviction and order passed by the Judicial Magistrate I, Krishnagiri in CC.No.389 of 2007 with modification.

For Appellant : Mr.P.Ezhilnilavan

For Respondent : Mr.C.Samuel, Legal Aid Counsel

JUDGEMENT

This Criminal Appeal arises out of the judgement of acquittal by the Additional District and Sessions Judge, Krishnagiri in CA.No.38 of 2012, dated 14.8.2015, reversing the order of conviction passed by the Judicial Magistrate I, Krishnagiri, dated, 15.6.2012 in CC.No.389 of 2007.

2. The complainant in CC.No.389 is the Appellant herein. The said calender case had been preferred under Section 138 of the Negotiable Instruments Act, seeking an order of conviction against the accused, Shamsath Begam, the Respondent herein, for issuance of a cheque for Rs.2 lakhs, which had been returned as dishonoured.

3. Before the Trial Court, after framing necessary charges, the accused had denied the charges levelled against her and pleaded for acquittal. Before the Trial Court, the complainant had examined himself as PW.1 and also examined two other witnesses, viz. Sankaran as PW.2 and Rajan Sundaram as PW.3. He had also marked Ex.P1 to Ex.P5. These documents included the cheque bearing No.123483 as Ex.P1, the counter foil for deposit of the cheque as Ex.P2, the intimation from the Bank regarding dishonour of the cheque as Ex.P3, the advocate notice as Ex.P4 and the acknowledgement card as Ex.P5. On the side of the accused, three witnesses were examined. The accused examined herself as DW.1 and also examined two other

independent witnesses, viz. Rajendran as DW.2 and Vijayalakshmi as DW.3.

4. It had been the case of the Appellant herein that the accused had given a cheque, bearing No.123483 in Ex.P1 for a sum of Rs.2 lakhs and he had deposited the same in his bank account by Ex.P2. Unfortunately, the cheque was dishonoured and the Bank had sent an intimation in Ex.P3. The complainant had sent a statutory notice under Ex.P4, which was received by the accused in Ex.P5.

5. On appreciation of the oral and documentary evidence adduced the Trial Court, by judgement dated 15.6.2012, had convicted and sentenced the accused, for the offence under Section 138 of the Negotiable Instruments Act to undergo six months Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months Rigorous Imprisonment. With respect to the claim of compensation under Section 357 of Cr.PC, the Trial Court had held that since the complainant had not proved the loss or injury or damages in view of the dishonour of the cheque, compensation claimed under Section 357 of Cr.PC cannot be granted.

6. As against the said judgement of the Trial Court, the accused had preferred an appeal in CA.No.38 of 2012 and the complainant had preferred Crl.RC.No.4 of 2014 before the Additional District and Sessions Court at Krishnagiri. They were both heard and by common judgement, dated 14.8.2015, the Additional District and Sessions Judge, had allowed the CA.No.38 of 2012, thereby acquitting the accused of all the charges and also dismissed Crl.RC.No.4 of 2012. As against the said judgement of the first appellate court, the complainant had preferred this Criminal Appeal.

7. This court heard Mr.P.Ezhil Nilavan, learned counsel for the Appellant and Mr.C.Samuel, legal aid counsel for the Respondent and perused the materials, including the oral and documentary evidence.

8. PW.1, the complainant had in his deposition stated that the accused had given a cheque, dated 25.12.2006 for Rs.2 lakhs, marked as Ex.P1 for the amount lent to her. She was working as a Junior Assistant in the Forest Department. According to him, the cheque was deposited on 25.4.2007 in the Indian Bank. The Bank had sent an intimation, stating that the cheque had been dishonoured and thereafter, the Appellant herein had issued a notice within the statutory period on 13.6.2007. The accused received the notice and the acknowledgement card for the same was marked as Ex.P4, which is dated 16.6.2007.

9. During his examination, PW.1 reiterated that he had lent a sum of Rs.2 lakhs to the Respondent. He had also examined two further witnesses to substantiate the fact that the cheque was dishonoured. The Respondent, who examined herself as RW.1, stated that she had borrowed a sum of Rs.1 lakh through Venkatasamy, Forest Ranger and she

did not know the accused directly. She however stated that there were other cases pending against her in the Magistrate court with respect to dishonour of cheques. The Respondent denied her signature in the cheque. She claimed that she had given a blank cheque to Venkatasamy. However, both the courts have held this part of evidence to be false and have stated that the signature found in the cheque is that of the Respondent.

10. During the cross examination, the contention of the Respondent herein was that she did not know the Appellant, but she had borrowed money from Venkatasamy, who was the Forest Ranger, for construction of a house. It is the further contention of the Respondent that she does not know the Appellant and therefore, she has stated that the complaint is mischievous and has to be dismissed. She denied her signature and stated that she had given a blank cheque to the said Venkatasamy.

11. Both the Trial Court and the first appellate court had found that the signature found in the cheque was that of the Respondent herein. However, the first appellate court had reversed the order of conviction, holding that it was improbable that the Respondent would have borrowed a sum of Rs.2 lakhs from a stranger and disbelieving the case of the Appellant, had acquitted the Respondent. But, a perusal of the records shows otherwise.

12. Once the signature of the Respondent is admitted and the cheque had been issued for valid consideration, the burden shifts on the Respondent herein, who was the accused, to explain under what circumstances the cheque was issued when the account was closed or when there was no sufficient balance in the bank account. The explanation of the Respondent that she had borrowed Rs.1,00,000/- through Venkatasamy, Forest Ranger, but had no knowledge of the Appellant herein, cannot be accepted for the simple fact that evidence with respect to signature in the cheque and denial of receipt of advocate notice has also been found to be false. The Respondent appears to be a person, who has faced litigation before the Magistrate Court. I hold that she had issued a cheque has been proved and once that fact is held to be proved, the further fact that the cheque was issued and was dishonoured naturally follows. Consequently, I am unable to subscribe myself to the order of acquittal of the first appellate court and it is to be set aside.

13. Since the Respondent had denied her signature and which denial was found to be false by the court, it is obvious that she had deliberately deposed falsity in court of law. It is her own case that she had received a sum of Rs.1 lakh from the Forest Ranger, Venkatasay. At any rate, I hold that the story of Forest Ranger is only a cover to hide the fact of borrowal from the Appellant herein. Consequently, I hold that the Appellant is also entitled for compensation under Section 357 of Cr.PC to an extent of Rs.1,00,000/- which had been admitted by the Respondent.

14. In the result, this Criminal Appeal is allowed. The Appellant is entitled to compensation of Rs.1,00,000/- (Rupees one lakhs only) under Section 357 of Cr.PC. The conviction and sentence passed by the Trial Court is confirmed. The Trial Court is directed to issue warrant to the accused to serve the sentence as directed by it.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

Srcm

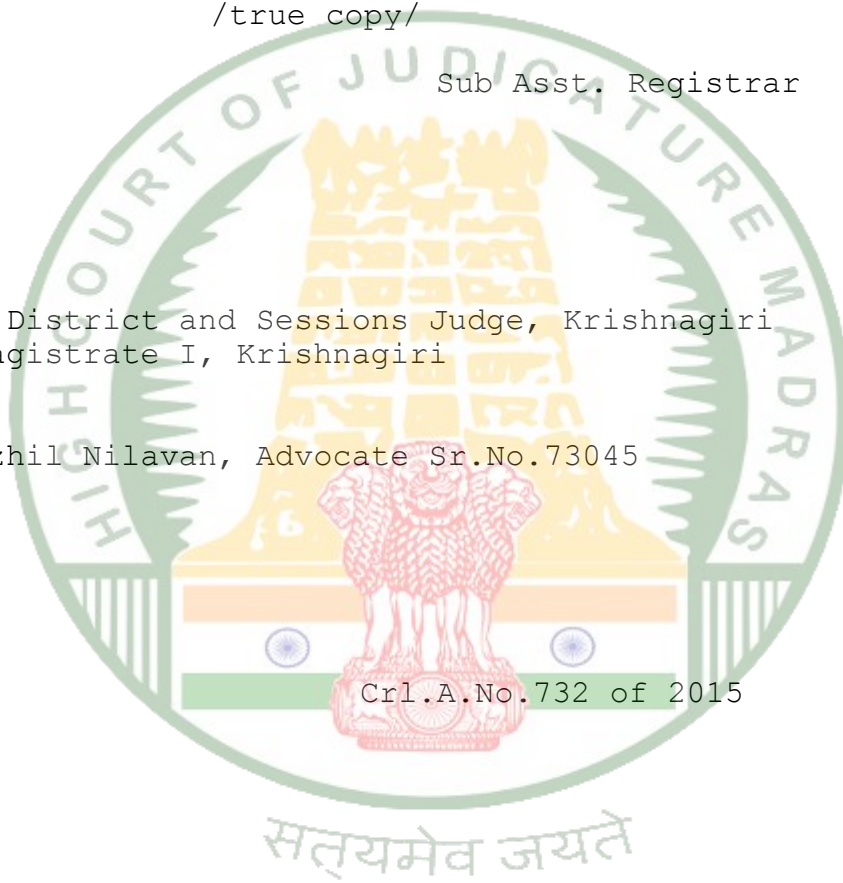
To:

- 1.The Additional District and Sessions Judge, Krishnagiri
- 2.The Judicial Magistrate I, Krishnagiri

+1 CC to M/S.P.Ezhil Nilavan, Advocate Sr.No.73045

CO-SAI

ths : 27.10.2017



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