

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 21.11.2016

Date of Pronouncement : 09.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.207 of 2010

M.A.Palanisamy
Appellant/Complainant

.....

versus

T.S.Sivakumar,
P.S.Subramaniam,
Thiruvengadanpalayam,
Perundurai Taluk,
Erode District.
Respondent/Accused

...

Prayer: Criminal Appeal filed under Section 378 (4) of Cr.P.C., to set aside the judgment dated 27.09.2007 in C.C.No.222 of 2002 on the file of the Judicial Magistrate No.1, Gobichettipalayam.

For Appellant : Mr.N.Baskaran

For Respondent : Mr.N.Manokaran

JUDGMENT

This criminal appeal has been filed by the appellant/complainant against the judgment of acquittal passed by the Judicial Magistrate No.1, Gobichettipalayam.

2.The case of the appellant/complainant is that the respondent/accused borrowed a sum of Rs.1,50,000/- from the complainant on 18.02.2002 and to discharge the same, the accused issued a post dated cheque bearing No.773379 for a sum of Rs.1,50,000/- dated 18.03.2002. When the complainant had presented the said cheque for collection on 18.07.2002 before the Indian Overseas Bank, Modachur Branch, Gobi, the cheque got bounced and returned to the complainant on 22.07.2002 with an

endorsement "Stop Payment", since he had no sufficient amount in his account to pay the cheque amount. Therefore, the complainant issued a registered lawyer's notice on 05.08.2002 to the accused, however, the accused did not claim notice and the notice was returned to the complainant on 12.08.2002 and therefore, the complainant filed a complaint before the Jurisdictional Magistrate for the offence under Section 138 of Negotiable Instrument Act. The learned Judicial Magistrate No.1, Gobichettipalayam found prima facie case as against the accused, has taken cognizance and taken the complaint on file in C.C.No.222 of 2002.

3. In order to prove the case of the appellant/complainant, on the side of the complainant, as many as 4 witnesses, P.W.1 to 4 were examined and Exs.P1 to 7 were marked. P.W.1 is the complainant and he has spoken about the borrowal of amount by the accused and issuance of cheque Ex.P1 and when it was presented for collection, the same got bounced and returned with the return memo Ex.P2 and the issuance of legal notice Ex.P3 to the accused, which was returned and also spoken about the filing of the complaint. P.W.2 is the Joint Manager of the Indian Overseas Bank and he has spoken about the presentation of the complainant and the return of the same. P.W.3 is the Branch Manager of Karur Vysia Bank and he has spoken about the return of the cheque issued by the accused, who is having account bearing Account No.336 in the name of T.S.Subramaniam and sons (Firm). P.W.4 is the postman, who has spoken that he does not know about P.S.Subramaniam and he knew only about T.S.S.Subramaniam and he has stated that there is no other Sivakumar except one Sivakumar, son of T.S.Subramaniam in Thiruvengadapalayam.

4. After examining the above said witnesses, the incriminating evidence as against the accused were put to him, for which, the accused denied the same as false and in order to disprove the case of complainant, though no oral witness was examined, Exs.D1 and D2 were marked on the side of the accused.

5. The trial Court, after completion of trial, on the basis of oral and documentary evidence produced by the complainant and the accused found the accused not guilty for the offence under Section 138 of the Negotiable Instruments Act, stating that the statutory notice was not addressed to the correct address of the accused and the address of the accused mentioned in the complaint is differed from the returned postal cover and giving benefit of doubt to the accused, the trial Court acquitted the respondent/accused. Aggrieved by the said judgment of acquittal passed by the trial court, the present appeal has been filed.

6. The learned counsel for the appellant would submit

that the complainant has sent the notice to last known address of the accused. The accused has purposefully has given the said wrong address. Once notice sent to correct address under Section 27 of the General Clauses Act, it is a deemed service and the trial Court failed to consider the above said aspect and acquitted the accused. In support of his contention, he has relied on the decision of the Apex Court in the case of C.C.Alavi Haji Vs. Palapetty Muhammed and another reported in (2007) 6 Supreme Court Cases 555 and prayed for allowing of the appeal.

7.The learned counsel for the respondent would submit that no notice has been sent by the complainant to the accused under Section 138 of Negotiable Instrument Act and actually, the name of the accused only is T.S.Sivakumar, whereas, in the address given by the complainant, it has been mentioned as P.S.Sivakumar. Even P.W.4 in his examination stated that there is no P.S.Sivakumar in the village and only T.S.Sivakumar alone is there and since no street number and no door number was mentioned in the address, he has returned the postal cover to the complainant himself and since there was no statutory notice issued to the accused, the trial Court has correctly acquitted the accused and there is no need to interfere with the judgment of the trial Court. In support of his contention, he has relied on the decision of the Hon'ble Apex Court in the case of Rahul Builders V. Arihant Fertilizers and Chemicals reported in (2008) 2 Supreme Court Cases 321 and the decisions of this Court in the case of P.Lingappan Vs. R.Palanisamy reported in 2008(1) CTC 204 and also the case of Dr.K.Kandasamy Vs. Mahalakshmi Metal and Scrap Processing Pvt. Ltd., reported in 2016(4) CTC 484.

8.Since the first appellate Court is a fact finding Court, this Court has to come to an independent conclusion as to whether the accused has committed the offence under Section 138 of the Negotiable Instrument Act and the complainant has proved his case against the appellant/accused beyond reasonable doubt?

9.Heard the learned counsel for the appellant and the learned counsel appearing for the respondent and perused the materials available on records as well as the judgment passed by the Court below.

10.The brief facts of the appellant's case is that the respondent herein has borrowed money from the appellant herein and to discharge the same, he issued a cheque and when the cheque was presented for collection, the same was returned as 'stop payment' and the complainant issued statutory notice under Section 138 of the Negotiable Instrument Act and since the same was returned to the complainant, the present complaint has been filed.

11. In order to find out the correctness of the judgment of the trial Court, it is relevant to refer the evidence of complainant, which would run thus:

P.W.1, the complaint has stated that the accused borrowed the amount from the complainant and for the same, he issued a cheque and when it was presented for collection, the same was returned as stop payment. Therefore, he issued notice, which was returned without service. Therefore the complaint against the accused. P.W.2 and 3 are the Managers of the respective banks and they have deposed about the presentation of cheque and the return of the same due to insufficient funds. P.W.4 is the postman has deposed that he does not know about P.S.Subramaniam and he knows only about T.S.S.Subramaniam and there is no other P.S.Sivakumar except one Sivakumar, son of T.S.Subramaniam in Thiruvengadapalayam and he further stated that since in the address no street name and no door number was mentioned, he returned the postal cover to the sender.

12. A perusal of the complaint, the complainant has mentioned the name of the accused as P.S.Shivakumar, whereas, in the Memorandum of Appeal, he has mentioned the name of the respondent as T.S.Shivakumar, son of P.S.Subramanian. However, perusal of the evidence of P.W.4 would show that he knows about one T.S.S.Sivakumar son of T.S..Subramanian and he has not known about P.S. Sivakumar. Further, he has stated in his evidence that there is no P.S.Sivakumar in Thiruvengadapalayam. In postal cover Ex.P.4 also it is mentioned as P.S. Siva Kumar, further, there is no street name and no door number was mentioned in the postal cover, he returned the same to the sender i.e. to the complainant. Perusal of the deposition of P.W.4 would also show that P.W.4 was searching the correct address for a period of one week and since the notice was not properly addressed, he was not able to deliver the same to the correct address and therefore, he redirected the postal cover to the address of the sender without service of notice. Therefore, considering this aspect, I am of the view that the statutory notice sent by the complainant is defective and the same has not been properly addressed to the accused and the complainant has not proved that the statutory notice was served to the accused. Therefore, the contention raised by the learned counsel for the appellant that the accused has purposefully given the wrong address and purposefully he evaded from the service of notice in order to escape from the clutches of law. Once the notice is properly addressed and despatched the same to the correct

address, it is deemed serviced under section 27 of General Clause Act. Considering the facts and circumstances of the present case on hand, the citation referred by the learned counsel for the appellant is not applicable to the present case on hand. In an appeal against acquittal, if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. In the instant case, the trial Court, after considering the entire evidence elaborately has acquitted the accused.

13. For the above said reasons, I am of the view that the complainant has not proved his case beyond reasonable doubt and the benefit of doubt shall be given to the accused and hence, I find no perversity in the judgment of the trial Court and no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is directed to be dismissed.

14. Accordingly, this criminal appeal is dismissed and the judgment of acquittal dated 27.09.2007 in C.C.No.222 of 2002 on the file of the Judicial Magistrate No.1, Gobichettipalayam is hereby confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Arul

To

1.The Judicial Magistrate No.1,
Gobichettipalayam

+1 cc to Mr.N.Manokaran Advocate sr 41479/17

Criminal Appeal No.207 of 2010

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