IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.126 of 2007

P.Kannan ... Appellant/Complainant

Vs

V.Ramu ... Respondent/Accused

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment passed in S.T.C.No.969 of 2005 on the file of the the Judicial Magistrate No.7, Coimbatore dated 17.11.2005.

For Appellant : Mr.B. Nedunchezhiyan

For accused : Mrs. Divya, for Mr.K.Goviganesan

JUDGEMENT

Challenging the order of acquittal passed by the learned Judicial Magistrate No.7, Coimbatore in S.T.C.No.969 of 2005 this Criminal Appeal has been filed.

2. The appellant is the complainant in a private complaint filed against the accused under Section 138 of Negotiable Instruments Act. The above complaint has been filed on the ground that the complainant is a dealer of spare parts for wet grinder and the accused was having business transaction with him. Apart from that the accused also borrowed a sum of Rs.8,00,000/- from the appellant, and in order to discharge the same, he has given a cheque and he has also given a sum of Rs.50,000/-. When the cheque of Rs.8 lakhs was presented for collection, the same was returned on the ground of insufficient funds. Thereafter, he has issued a legal notice demanding

payment. But the accused refused to receive the demand notice issued by the complainant. Hence, after following the procedure, the present private complaint has been filed.

3. In order to prove his case, the appellant examined himself as P.W.1 and marked the returned cheques as Ex.P.1 and Ex.P.2, returned memo as Ex.P.3, Legal notice as Ex.P.4 and the reply notice with cover as Ex.P.5.

4. When the incriminating materials were put to the accused/accused under Section 313 Cr.P.C., the accused/accused denied the liability and he has examined 3 witnesses, John George, driver of the accused as DW1 and one Elango was examined as DW2 and the accused examined himself as DW3.5

5. The case of the respondent/accused was that there is no liability with the complainant and already entire liability has been discharged. The present two cheques have been given to one Elango, who was examined as DW2, for the spare parts purchased from him. Those two cheques were taken by the complainant and misusing the same, the present complaint has been filed. In order to prove his case, he examined his car driver as DW1, who is said to have handed over the disputed cheques to the Elango and the said Elango was examined as DW2. According to him, the two cheques were given to DW2 by the accused for goods purchased by him. Subsequently, he repaid the amount and the cheques were with him. One day, the complainant came to his office and he has taken the cheques promising to hand over the cheques to the accused/accused. But the cheques have been misused by him. The accused also examined himself as DW3. He has reiterated the same and he has also marked 10 exhibits, which are related to various legal notices issued to the accused, his wife and his brother and also receipt for payment of Rs.50,000/- by the appellant.

6. Considering all the above materials the trial Court acquitted the accused/accused on the ground that the appellant failed to prove the liability. Now, challenging the above said order of acquittal, the present revision has been filed.

7. I have heard the learned counsels appearing for the appellant and the accused and perused the materials available on record.

8. The case of the complainant was that the complainant and the accused had business transaction. In order to discharge the liability in the business transaction, the disputed cheques had been given by the accused, which was subsequently dishonoured. But, the case of the accused is that, he admitted the liability to some extent in the business transaction and he has

paid a sum of Rs.50,000/- towards the said liability and he has also marked the receipt for payment of Rs.50,000/-(Ex.D.1).

9. The accused also had a business transaction with one Elango, DW2, and there was a due, and in order to discharge the above liability, he has issued the cheques and also given two blank cheques to DW2, thereafter, he has discharged the entire liability. The above two cheques have been misused by the appellant/complainant. DW1, the driver of the accused, has handed over the cheques to DW2. DW2, Elango has categorically stated that the disputed 2 cheques were only given to him to discharge the liability. But the complainant, who came to his office received the cheques from him and promised him that he will hand over the same to the accused, believing the same, he handed over the cheques to him, but the same were misused by the complainant. Apart from that the accused has also filed various legal notices issued by the complainant to the family members and reply notices. From all these materials, the accused has created a doubt regarding the liability and also raised the initial presumption under Section 119 of Negotiable Instrument Act. Once the initial presumption is raised, it is for the complainant to prove that there is legally enforceable debt. But, absolutely, there is no material filed by the complainant to prove the liability. Except the disputed cheques and oral evidence of the complainant, there is no evidence available on his side that there was a legally enforceable debt. Especially, when the liability arose out of the business transaction between the complainant and the accused, the complainant not even filed the ledger maintained by him to prove the liability of the accused.

10. The trial Court after considering the entire materials rightly acquitted the accused. I find no illegality or irregularity in the order passed by the Court below. In the above circumstances, there is no merit in the appeal and it deserves to be dismissed.

11. In the result, the Criminal Appeal is dismissed and the judgment of the Court below is confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mrp

To

The Judicial Magistrate NO.VII,
Coimbatore.

Copy to

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

+1cc to M/S.B.Nedunchezhiyan, Advocate Sr.90091

+1cc to the Government Pleader Sr.89961

Crl.A.No.126 of 2007

mp[co]
srg 13/06/2018