IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.130 of 2007

N.Govindasamy .. Appellant

Vs

A.Sampath .. Respondent

Prayer:- Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the order of acquittal of the respondent passed by the learned District Munsif - Cum - Judicial Magistrate, Neyveli on 03.08.2006 in C.C.No.302 of 2002 and allow the appeal and convict the respondent for the offence under Section 138 of the N.I.Act and direct the respondent to pay compensation to this appellant.

For Appellant : Mr.R.Thirugnanam
For Respondent : Mr. C.D.Johnson

JUDGEMENT

The appellant is the complainant in a private complaint filed under Section 138 of Negotiable Instruments Act. The trial Court after the trial acquitted the accused. Challenging the same, the present appeal has been filed.

2. The case of the complainant, in brief, is as follows:

On 06.03.2002, the respondent/accused borrowed a sum of Rs.2,20,000/-. Thereafter, on 06.03.2002, in order to discharge the above liability, he issued a cheque to the appellant dated 06.04.2002, drawn on Central Bank of India. When the above cheque was presented on 26.04.2002, the same was returned on the ground of "account closed". After completing the legal formalities, a complaint has been filed for an offence under Section 138 of Negotiable Instruments Act. The trial Court has taken congnisance and issue summons to the accused.

3. In order to prove its case the complainant examined himself as P.W.1 and the Bank Manger as P.W.2, and also marked 6 exhibits. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or mark any documents on their side.

4. The case of the respondent/accused was that he was running a cycle mart. In the year 1993, he borrowed some amount from the complainant, at that time, he has given a cheque as a security to the complainant, thereafter, he has repaid the amount in the year 1995 itself, and the respondent/accused also closed the cycle mart, and he has also closed the bank account in the year 1995 itself. Now using the above cheque given as security, the present complaint has been filed in the year 2002.

5. Considering all materials available on record, the trial Court acquitted the accused on the ground that the cheque has been given by the respondent only in the year 1993, as security. Apart from that the cheque was issued only in the name of a proprietor concerned, not to the appellant/complainant, and the respondent has raised the initial presumption. But the appellant failed to prove that there is a legally enforceable debt. Now, challenging the above said order of acquittal, the present appeal has been filed.

6. Heard,Mr.R.Thirugnanam, learned counsel appearing for the appellant and Mr.C.D.Johnson, learned counsel appearing for the respondent. I have perused the records carefully.

7. It is the case of the appellant that the respondent borrowed a sum of Rs.2,20,000/- on 06.03.2002. In order to discharge the same, a cheque has been issued by the accused. When the same was presented to the bank it was returned on the ground of "account closed". But the respondent/accused has raised a defence that the cheque was given in the year 1993, while he was running a cycle mart and the cheque has been issued in the name of a proprietory concern which has been used by the appellant now. The Bank Manager, who was examined as P.W.2 also stated that the account in which the cheque was issued in the year 1995 itself. From his evidence, it is clear that the cheque was issued in the year 1995, not in the year 2002 as claimed by the appellant, by establishing that the cheque was not issued in the year 2002, the initial presumption on the respondent has been raised, and it is for the appellant to prove that there was a legally enforceable debt, and in order to discharge the same, the present cheque has been issued. But the appellant/complainant failed to prove that there is a legal enforceable liability. Considering all these materials, the trial Court has rightly came to the conclusion that the appellant failed to prove his case and acquitted the respondent. I find no illegality or perversity in the judgment of the trial Court, and in the above said circumstances, I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

8.In the result, the Criminal Appeal is dismissed and the impugned order of acquittal passed by the court below is hereby confirmed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dh/mrp

To

The District Munsif - Cum -
Judicial Magistrate, Neyveli.

Crl.A.No.130 of 2007

KS(CO)
GN(27/09/2018)