

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2017

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Cr1.A.No.276 of 2008

A.Gabriel, .. Appellant/Complainant  
Rep.by S.Inigo Irudhayaraj

Vs.

J.Alphonsa Sasikala ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C. Praying to set aside the Judgment dated 27.02.2008 in C.C.No.2728/2007 passed by learned VII Metropolitan Magistrate, George Town, Chennai-1.

For Appellant : Mr. T.Ashok Kumar  
For Respondent : No appearance

JUDGMENT

This appeal is filed under Section 378 Cr.P.C, against the order of acquittal passed by the learned VII Metropolitan Magistrate, George Town, Chennai - 1.

Brief facts of the case of the appellant/complainant:

2.The respondent/accused approached the appellant/complainant and borrowed amounts on various dates for her business and family commitments and issued a cheque(towards part payment) bearing No. 386700 dated 30.12.2006(Ex.P2) for a sum of Rs.1,30,000/-, drawn on Vijaya Bank, Nagercoil Branch. The respondent/accused signed the cheque in her capacity as President of one J.J. Trust. When the appellant/complainant presented the cheque for encashment on 02.01.2007 through his bankers viz., South Indian Bank, Nagercoil, the check was returned unpaid for the reason "insufficient funds" as per the cheque return memo Ex.P4. Thereafter, the appellant/complainant issued a Statutory Notice dated 09.01.2007, a copy of which is marked as Ex.P5, to the respondent/accused directing her to pay the amount due under the cheque within 15 days from the date of receipt of the notice.

3. The respondent/accused received the said notice on 11.01.2007, as evidenced by the postal acknowledgement Card Ex.P6. However, she did not come forward to make good the payment and did not also send any reply. Therefore, the appellant/complainant filed a private complaint under section 200 Cr.P.C., before the VII Metropolitan Magistrate, George Town, Chennai - 1, for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. In the trial Court, the Power of Attorney of the complainant was examined as PW1 and Ex.P1 to P6 were marked. No oral evidence was adduced on the side of the respondent. However Ex.R1 was marked.

5. After full contest, the learned VII Metropolitan Magistrate, George Town, Chennai - 1, acquitted the accused under Section 255(1) of Cr.P.C., aggrieved against which the appellant/complainant has filed the present appeal on the following grounds:

"(i). The Trial Court has not appreciated the oral and documentary evidence adduced on the side of the appellant/complainant.

(ii). The Trial Court has failed to consider that the cheque was issued for the personal liability of the respondent/accused for the money borrowed by her.

(iii). Though, she had issued the cheque in the capacity as President of J.J Trust, it is to be pointed out that the respondent/accused cannot escape from her personal liability.

(iv). The trial Court ought to have convicted the accused particularly when she has not chosen to examine herself to rebut the presumption under section 118 of the NI Act".

6. The point for consideration is whether the order of acquittal passed by the VII Metropolitan Magistrate, George Town, Chennai - 1 is liable to be set aside.

7. The respondent/accused issued Ex.P2 cheque for a sum of Rs.1,30,000/- drawn on Vijaya Bank, Nagercoil Branch and the said cheque is dated 30.12.2006, to liquidate the borrowings taken from the appellant/complainant, who is represented in this case by one Mr.S.Inigo Irudhayaraj who was examined as PW1 and

the Power of Attorney Deed is marked as Exhibit P1. This said cheque which was deposited for collection on 02.01.2007 got returned unpaid for the reason "insufficient funds". This cheque was issued from an account in the name of J.J. Trust by the respondent/accused in the Capacity of President of the Trust. The Contention of the respondent/accused is that, since the cheque was issued from the account of the J.J.Trust, the said Trust should have been impleaded as a party and also the other trustees of the trust. It was the contention of the respondent/accused that this case was not maintainable for non inclusion of the Trust and Trustees as parties.

8. The respondent/accused also marked a copy of the Trust Deed(Exhibit R1) of the J.J.Trust wherein the name of the accused did not find a place even as a Trustee, much less as the President of J.J.Trust. This revelation was incomprehensible and the learned VII Metropolitan Magistrate George Town, Chennai, opined that by including the Trust and the other Trustees as necessary parties, more clarity could have been brought to light on the said cheque, Exhibit P2. Accordingly, the learned VII Metropolitan Magistrate, George Town, Chennai-1, found that the guilt of the accused/respondent is not proved, since the cheque was not from the accused's account but from the account of J.J.Trust wherein the respondent/accused was not even a Trustee as per the Trust deed dated 18/09/20001(Exhibit R1.) adduced by the respondent.

9. The decision of the trial Court in the instant case appears to be apparently reasonable. Nowhere in the entire proceedings, the learned Counsel for the appellant/complainant has made any attempt to counter or disprove the contents of the trust deed. It was not explained by the accused as to how the cheque of the Trust account in which she was not a Trustee came into her hands. Notwithstanding this fact the dishonour of the cheque cannot be used against her when she is not even a Trustee as per Ex.R1. The contention of the accused that non-inclusion of the trust and the other Trustees is also filmy in the light of the revelation that the accused was in no way connected with the said Trust.

10. The learned VII Metropolitan Magistrate, George Town, Chennai-1, opined that inclusion of the Trust and the other Trustees could have thrown some light on how this particular cheque came into possession of the accused. But in my opinion, the appellant/complainant has failed to adduce evidence, by examining other independent witnesses like the Manager of Vijaya bank, Nagercoil Branch, on which the cheque was drawn. More than the Trust and the Trustees, the Bank Manager could have been informative on the account to which the cheque pertains. In such circumstances, where adequate facts have not

been brought out, I did not see any reason to interfere with the findings of the learned VII Metropolitan Magistrate, George Town, Chennai-1.

11. The appellant/complainant ought to have been more careful while accepting the cheque from the Trust account and ought to have insisted on a personal account cheque from the respondent/accused.

12. In the result,

(i). CrI.A.No.276 of 2008 is dismissed.

(ii). The order of acquittal passed by the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.2728 of 2007 is confirmed.

Sd/-  
Assistant Registrar(CS VI )

//True copy//

Sub Assistant Registrar

To

1.The VII Metropolitan Magistrate,  
George Town, Chennai.

2.do-Thro-The Chief Metropolitan Magistrate,  
Egmore, Chennai.

Copy To

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

WEB COPY

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RSY(CO)  
GN(23/01/2018)