IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.312 of 2007

R. Soundararajan ... Appellant

Vs.

A.Sivaraj ... Respondent

Prayer : Criminal Appeal filed under sections 378 r/w. 382 of Criminal Procedure Code against the order of acquittal of the accused by the learned Additional District Judge Fast Track Court No.I, Coimbatore by his judgment dated 16.12.2005 in C.A.No.380 of 2005 setting aside the conviction of the accused for an offence under Section 138 of the Negotiable Instruments Act rendered by the learned Judicial Magistrate No.VI Coimbatore by his judgment dated 08.08.2005 in C.c.No.720 of 2002.

For Appellant : M/s.R.John Sathyan
For Respondent : M/s.K.Nagarajan

O R D E R

Challenging an order of acquittal, the present appeal has been filed. The appellant is the complainant in a private complaint filed for the offence under Section 138 of Negotiable Instruments Act. The trial Court convicted the respondent/accused and sentenced him to undergo Simple Imprisonment for three months and pay a fine of Rs.500/- in default to undergo Simple Imprisonment for one week. Challenging the said conviction and sentence the respondent/accused filed an appeal in Crl.A.No.380/2005 on the file of the Additional District Fast Track Court No.I, Coimbatore. The lower appellate Court allowed the appeal and acquitted the respondent/accused. Now challenging the order of acquittal, the appellant/complainant is present before this Court with this Criminal appeal.

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

The respondent/accused borrowed a sum of Rs.25,000/- on 10.01.2000, and executed a pro-note. Subsequently in order to discharge the liability, the respondent/accused has issued a cheque on 10.07.2002. When the same was presented for encashment, and returned on 13.07.2002 with endoresement

"Account Closed". Thereafter, the appellant issued a legal notice to the accused and the respondent/accused issued the reply notice on 07.08.2002 disputing the liability. Since the respondent/accused failed to pay any amount, the appellant filed a private complaint. The trial Court taken cognizance of the offence and a summons was issued to the respondent/accused.

3. In order to prove its case, the appellant/complainant examined himself as P.W.1 and the Assistant Manager, Indian Bank, P.N.Palayam, was examined as P.W.2 and filed a pro-note (Ex.P.1), Cheque as Ex.P.2, Written Memo as Ex.P.3, the legal notice issued by the appellant/complainant as Ex.P.4, acknowledgment card as Ex.P.5, for the notice received by the respondent/accused and the reply notice sent by the respondent/accused was marked as Ex.P.6, and the letter sent by the respondent/accused for Closing Account as Ex.P.7.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same, and he examined his wife as D.W.1, the Bank Mangers of the bank as D.Ws.2 and 3 and he examined himself as D.W.4. Apart from that he has also marked 6 documents namely the Account Statement by the respondent/accused as Ex.D.1, statement of bank account as Ex.D.2, Account Statement of one Eswaran as Ex.D3, the return cheque memo as Ex.D4, the reply notice sent by him as Ex.D5 and the another complaint given by the complainant against one Swaminathan as Ex.D.6.

5. It is the case of the respondent, that he has borrowed a sum of Rs.25,000/- from the complainant and executed a pronote for a sum of Rs.25,000/- in favour of one Sivaraj who is the partner of the present complainant. At the time of borrowing the amount, he gave the pronote and 3 blank cheques. Subsequently the complainant Soundarajan, and another partner of the complainant, by name Moorthy forced and compelled the respondent's wife, and obtained a cheque for a sum of Rs.40,000/- in the name of one Eswaran and also withdraw the amount from his account, in order to prove the same, he has examined Bank Manager as D.W.2, and the respondent/accused discharged the liability, but the complainant has misused the blank cheques and filed the complaint.

6. The trial Court convicted the accused holding that there is no proof to show that Moorthy and Soundarajan are partners of the complainant. Where as the appellate Court considering the notice was issued by one Moorthy and also other materials came to the conclusion that Moorthy is the partner of the complainant and they have also received the amount, hence, there is no liability, holding so the lower appellate Court has acquitted the accused/respondent. Now, challenging the above order of

acquittal the appellant/complainant is before this court with this appeal.

7. I have heard, Mr.R.John Sathyan, learned counsel appearing for the appellant and Mr.K.Nagarajan, learned counsel appearing for the respondent and also perused the records carefully.

8. It is the case of the appellant/complainant is that the respondent/accused has borrowed a sum of Rs.25,000/- and executed a pro-note. In order to discharge the liability he has issued a cheque and when the same was presented, it was returned, and the respondent/accused failed to pay the amount, hence the complaint was filed. It is the case of the respondent/accused that, at the time of borrowal he had given three blank cheques to the complainant. Thereafter, the appellant along with other partners forced and compelled the wife of the accused and obtained another cheque in the name of one Moorthy, who is also a partner of the complainant and the amount was already withdrawn on 13.07.2002. In order to prove the same, he has examined the Bank Manager, deposing that all the three partners have presented three cheques given by the accused when the same was returned a legal notice was issued to the respondent/accused demanding money for which he had sent a reply and Ex.D5, in which he has clearly stated that one of the partners by name Moorthy has issued a notice asking to pay in respect of cheque bearing No.448172. On the another cheque was also presented by one Eswaran another partner of the complainant and the present cheque was filed by the complainant, which is bearing No.448173.

9. Considering all these materials, the lower appellate court has held that the address of both Eswaran and the complainant are same, apart from that reply notice issued by the respondent/accused has clearly stated that already amount has been paid, through his wife, infavour of his partner, Eswaran.

10. Considering all these materials the appellate Court has come to the conclusion, the accused has paid the amount and there is no liability only in order to harass the accused, the present complaint has been filed. The appellate Court considering the entire materials acquitted the accused. I have gone through the entire material available on records, and I find no illegality or irregularity in the judgment of 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

dh
To
1. The learned Additional District Judge
Fast Track Court No.I, Coimbatore.

2. The learned Judicial Magistrate No.VI,
Coimbatore.

+1cc to M/s.R.John Sathyam, Advocate sR.No.89664

RK(CO)
sm:12.6.2018
dh

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