IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM:

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.A.No.212 of 2006

R.Sami .. Appellant/Complainant

Vs.

K.T.Harichandran ..Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 Cr.P.C. Praying to set aside the order of learned X Metropolitan Magistrate, Egmore, Chennai passed in C.C.No.14189 of 2003 on 07.02.2005.

For Appellant : Mr. R.Kolanchinathan

For Respondent : No appearance

JUDGMENT

The appellant-complainant had filed a complaint under Section 200 of Cr.P.C., before the learned X Metropolitan Magistrate, Egmore, Chennai against the accused Thiru. K.T. Harichandran residing at No.72, O' Block, M.M.D.A., Arumbakkam, Chennai-106 for an offence punishable under Section 138 of Negotiable Instrument Act.

2. The case of the complainant in brief is that during the month of June 2002, the respondent-accused approached him and informed him that the then Minister of Tamil Nadu Electricity Board is his close relative and that he could secure a job for his brother-in-law in the Tamil Nadu Electricity Board and demanded a sum of Rs.6,50,000/- as consideration for securing the job. The appellant had paid a sum of Rs.3,00,000/- on 20.06.2002 and Rs.2,00,000/- on 18.07.2002 and Rs.1,50,000/-on 15.08.2002. Thus, totally a sum of Rs.6,50,000/- was paid by the appellant.

3. However, the respondent did not keep up his promise of securing the job in the Tamil Nadu Electricity Board and when the appellant requested him to return back the money, the respondent executed a Declaration Deed dated 25.09.2002 in favour of the appellant and also a post dated cheque in favour of the appellant for a sum of Rs.6,25,000/-. The cheque was dated 19.06.2003 and when the appellant presented the cheque on 20.06.2003 with his bankers namely Indian

Bank, Thirumangalam branch for encashment, the cheque was dishonored for the reason “insufficient funds”. When the appellant informed the accused about the return of the cheque the latter requested the former to represent the cheque on 23.08.2003. Accordingly, the appellant represented the cheque on 23.08.2003, and it was once again returned for the reason “insufficient funds”. Therefore, the appellant issued a lawyer's notice dated 27.08.2003 calling upon the accused to pay the amount within 15 days from the date of receipt of the said notice. The reply notice was given by the respondent/accused dated 13.11.2003 which according to the appellant contained false allegations.

4. The appellant before the trial Court examined himself as PW1 and relied on Ex.P1 to Ex.P7 to substantiate his contention. The respondent also examined himself as RW1 and marked Ex.R1.

5. The learned X Metropolitan Magistrate, Egmore, Chennai, in her order dated 07.12.2005, acquitted the respondent/accused on the ground that since the entire transaction between the appellant and the respondent is tainted with illegality, the

complainant could not get any privilege to prosecute the respondent under Section 138 of Negotiable Instruments Act and ultimately dismissed the complaint and acquitted the accused under Section 255(1) Cr.P.C.

6. Aggrieved against the said orders passed by the learned X Metropolitan Magistrate, Egmore the present appeal is filed by the appellant on the following grounds:-

(i) The Lower Court has committed an error in holding that Section 58 of the Negotiable Instrument Act would apply to the facts of the present case.

(ii) The Lower Court also failed to see that the respondent had issued a cheque towards repayment of money received by him and that there is legally enforceable debt.

7. The point for consideration is whether the order of acquittal passed by the learned Metropolitan Magistrate can be sustained.

8. At the outset, it may be observed that the appellant's admitted case is that he had paid a sum of Rs.6,50,000/- to the respondent to secure a job in the Tamil Nadu Electricity Board. It is the contention of the appellant that he believed the words of the respondent and parted with a sum of Rs.6,50,000/- in cash.

9. As per Section 58 of Negotiable Instruments Act, any instrument obtained by unlawful means or not for lawful consideration, no claim can be made based on the said instrument. Section 58 of the Negotiable Instrument Act is extracted herein:-

> *"When a negotiable instrument has been lost, or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course".*

10. It is also to be noted that the basic ingredients under Section 138 are that " any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence". For the purpose of this Section "debt or other liability means legally enforceable debt or other liability. Therefore, the first and foremost ingredient is that there should be a legally enforceable debt.

11. The appellant has admitted that the consideration of Rs.6,50,000/- has been given to the respondent only to secure a job in Tamil Nadu Electricity Board. As rightly pointed out by the learned X Metropolitan Magistrate, Egmore, for any employment in Tamil Nadu Electricity Board, the criteria for selection is the basic qualification and eligibility. There cannot be any payment of money for securing a job.

Therefore, since the appellant has paid a sum of Rs.6,50,000/- to the respondent with enough knowledge that the money is being paid as a bribe for securing a job, it cannot be said that the consideration is a lawful one.

12. The learned X Metropolitan Magistrate had analyzed the case of the complainant in proper perspective and the decision is based on some principles of law. Therefore, I do not see any reason to interfere with the findings of the learned X Metropolitan Magistrate, Egmore and the order of acquittal passed by the learned X Metropolitan Magistrate, Egmore is confirmed.

13. In the result, the Criminal Appeal is dismissed.

08.12.2017

rpl

To

1.The Chief Metropolitan Magistrate, Egmore, Chennai.

2.The X Metropolitan Magistrate, Saidapet, Chennai

R.HEMALATHA.J,

rpl

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