IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.11.2017

Pronounced on .11.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.A. Nos.211 and 213 of 2012

E.Murugesan .. Appellant/Complainant in both cases

Versus

M.Chakaravarthi .. Respondent/Accused in both cases

Prayer in both appeals: Appeals filed under Section 378(4) of Cr.P.C. to set aside the judgment dated 12.11.2011 made in Criminal Appeal Nos.40 and 41 of 2009 on the file of the District and Sessions Judge, Nagapattinam reversing the judgment of the judgment and conviction of the respondent/ accused by the Judicial Magistrate, Sirkazhi, dated 28.07.2009 and 31.07.2009 in C.C. Nos.317 and 318 of 2002 and convict the accused and restore the judgment.

For appellant in both cases: Mr.R.Rangarajan

For Respondent : Notice served in Crl.A. No.211 of 2012

M/s.K.M.Vijayan Associates in Crl.A. No.213 of 2012

COMMON JUDGMENT

These appeals have been filed by the complainant against the judgment dated 12.11.2011 made in Criminal Appeal Nos.40 and 41 of 2009 on the file of the District and Sessions Judge, Nagapattinam reversing the judgment and conviction of the respondent/accused by the Judicial Magistrate, Sirkazhi, dated 28.07.2009 and 31.07.2009 in C.C. Nos.317 and 318 of 2002.

2.For the sake of convenience, the appellant and the respondent will be referred to as the complainant and the accused respectively.

3.It is the case of the complainant that on 14.06.2001, the accused borrowed Rs.2,70,000/- agreeing to repay the amount within three months and executed a letter of agreement. In discharge of the liability, on 25.02.2002, the accused gave two cheques for Rs.1,20,000/- dated 25.02.2002 and Rs.1,50,000/- dated 15.03.2002. The complainant presented the cheque dated 25.02.2002 for Rs.1,20,000/- (Ex.P1) for collection in the State Bank of India, Sirkali Branch on 25.02.2002. On the same day, the said cheque was returned for 'insufficient funds' which was intimated to the complainant on 26.02.2002. The second cheque for Rs.1,50,000/- was presented on 15.03.2002 and that was also returned for 'insufficient funds' on 16.03.2002. The complainant issued statutory notices dated 07.03.2002 and 18.03.2002 (Ex.P5) to the accused. The accused received the notices and gave a reply notice dated 19.03.2002 (Ex.P8) denying the loan transaction. The complainant initiated two prosecutions for each cheque separately in C.C. No.317 of 2002 and C.C. No.318 of 2002 before the Judicial Magistrate, Sirkali.

4.On the appearance of the accused before the Trial Court, he was questioned about the substance of the accusation, which he denied. In order to prove the case, the complainant examined himself as P.W.1. and Sundarrajan, (P.W.2) the Branch Manager of Indian Bank where the accused was maintaining his account, and Veeraraghavan, (P.W.3) Manager, State Bank of India where the complainant was maintaining his account, were examined. On behalf of the complainant, twelve documents were marked.

5.When the accused was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C., he denied the same. The accused examined himself as D.W.1 and also examined Ganesan, (D.W.2) and Rajendran, (D.W.3). On behalf of the accused, ten documents were marked. After hearing either side and considering the evidence adduced, the Trial Court, by judgment dated 28.07.2009 and 31.07.2009, convicted the accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo one year rigorous imprisonment and fine of Rs.5,000/- and in default, to undergo three months rigorous imprisonment. Out of the fine amount, Rs.4,500/- was directed to be paid as compensation to the complainant. Challenging the conviction and sentence, the accused filed C.A. Nos.40 and 41 of 2009 which were heard by the District and Sessions Judge, Nagapattinam, who, by his judgment dated 12.11.2011, has acquitted the accused, aggrieved by which, the complainant has preferred the present appeals against the acquittals.

6.At the outset it, may be necessary to extract the following passage from the judgment of the Supreme Court in Arul Velu and another vs. State represented by the Public Prosecutor and another reported in 2009 (10) SCC 206.

> "36.Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of

acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law.”

7.This Court carefully perused the evidence of the complainant (P.W.1). The complainant, in his evidence, has stated that the accused had borrowed Rs.2,70,000/- on 14.06.2001 and that the accused had given a letter of undertaking agreeing to pay the amount within three months. He has further stated in his evidence that when he demanded the return of the amount, the accused gave two cheques, one dated 25.02.2002 for Rs.1,20,000/- and other dated 15.03.2002 for Rs.1,50,000/- and took back the written letter. He has further stated in his evidence that when he presented the two cheques, the same were returned unpaid and he issued the Statutory Notices dated 07.03.2002 and 18.03.2002 for which the accused gave a reply notice dated 19.03.2002 (Ex.P8).

8.It is the specific defence of the accused that he has not borrowed any amount from the complainant on 14.06.2001, but, he had borrowed some money from the complainant in the year 1995 for which a sum of Rs.40,000/- was due as on 04.07.1998, for which two un-filled but signed cheques were given as security. He had also given his land for cultivation to the complainant. Thus, the accused has not disputed his signature in the cheques, but had strenuously disputed the very debt itself. Under Section 139 of the Negotiable Instruments Act, if once the accused admits the execution of the cheque, the burden shifts on him to prove at least by preponderance of probability that the cheque was not issued for the alleged loan. If the accused discharges the burden, then the burden shifts on the complainant to prove by cogent evidence that the cheque was issued for the loan in question. In this case, in the statutory notices dated 07.03.2002 and 18.03.2002 (Ex.P5) issued by the complainant, the complainant has stated neither the loan amount nor the date on which the loan was given to the accused. On the contrary, the accused has taken a stand in the reply notice itself that he has had loan transaction with the complainant in the year 1995 for which balance of Rs.40,000/- only has to be paid by him for which he had given the two signed cheques and his land also to the complainant. In the cross examination of the complainant (P.W.1), he has clearly admitted that he knew the accused from 1995; that on 04.07.1998, a dispute arose between them with regard to the loan transaction and the same was taken to the Traders Association and a panchayat was held in Bajanai Madam in

Sirkali; that in that panchayat, the accused had given 96 kuzhi of land to the complainant. That apart, in the cross examination of the complainant, he was confronted with a vital document viz. Ex.D.1, a letter dated 16.09.1998 written by the complainant in the letter head of his Finance Company and the same has been signed on a revenue stamp. The complainant has admitted his signature in that letter (Ex.D1) and in that letter, it is clearly stated that out of Rs.60,000/-, the accused had paid Rs.20,000/- and only a balance of Rs.40,000/- remains.

9.Therefore, in the opinion of this Court, the accused has successfully discharged the burden cast on him under Section 139 of the Negotiable Instruments Act by establishing that there was no loan transaction as alleged by the complainant on 14.06.2001. Dictates of common sense states that when there has been a serious dispute between the complainant and the accused regarding the loan taken by the accused in the year 1998 itself and that the matter had to be resolved in a panchayat on 04.07.1998, it would be absurd to accept the contention of the complainant that in the year 2001, he gave a loan of Rs.2,70,000/- and that the accused had taken away the written undertaking after giving him two cheques of which one was a post-dated cheque.

10.It must be remembered that the complainant has admitted in evidence that he was running Balaji Finance Corporation. In the appeal before the Sessions Court, the Sessions Judge had permitted the complainant to adduce additional evidence by marking Ex.P31 viz. the Muchalika dated 04.07.1998. The Sessions Court has appreciated Ex.P13 and has held that, when even in the Muchalika it is stated that the accused has not been able to repay Rs.1,70,000/- to the complainant in 1998, the assertion of the complainant that he advanced a loan of Rs.2,70,000/- in the year 2001 is unbelievable. That apart, the complainant has also admitted that he is in possession of 90 kuzhis of land belonging to the accused.

11.The accused has further stated in his chief examination that the complainant had set up a person by name Paneer Selvam, working under him to foist a false case under SC and ST (Prevention of Atrocities) Act against the son of the accused in order to force the accused to give the amount of Rs.40,000/-. There has been no cross examination on this aspect.

12.Thus, in the opinion of this Court, the First Appellate Court has appreciated the evidence on record in the right perspective bearing in mind the fact that the accused had discharged the burden under Section 139 of the Negotiable Instruments Act.

13.In the light of the law laid down by the Supreme Court in Arul Velu (supra), the acquittal of the accused by the First Appellate Court does not warrant interference and accordingly, the appeals are devoid of merits and the same are dismissed.

Sd/-
Asst.Registrar (CS IX )

/true copy/

Sub Asst. Registrar

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To

1.The District and Sessions Judge,
Nagapattinam.

2.The Judicial Magistrate, Sirkazhi.

3.do Thro'
The Chief Judicial Magistrate,
Nagapattinam.

Copy to

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

+1cc to M/s.K.M.Vijayan Associates, Advocate in sr.no.80184

Crl.A. Nos.211 and 213 of 2012

mr(co)
nr 22/12/2017