

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.A.432 of 2012

S.Muthu

..Appellant/complainant

Vs.

S.Ganesh Babu

..Respondent/Accused

Criminal Appeal filed under Section 378 (4) of the Code of Criminal Procedure, against the judgement passed in C.A.No.5 of 2007 on the file of the Additional District Sessions Judge, (Fast Track Court No.2), Salem dated 14.06.2007 to set aside the order passed in C.C.No.485 of 2004 on the file of the Judicial Magistrate No.5, Salem, dated 19.12.2006.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.R.Marudhachalamurthy

J U D G M E N T

For the sake of convenience, the appellant and the respondent are referred to as complainant and accused.

2. It is the case of the complainant that on 05.03.2004, the accused borrowed a sum of Rs.5,00,000/- [Rupees Five lakhs only] for his urgent family and business expenses and in discharge of the liability, the accused issued a cheque dated 05.05.2004 for a sum of Rs.3,00,000/-, which when presented by the complainant, was returned for insufficiency of funds on 06.05.2004. The complainant issued a statutory notice dated 15.05.2004 calling upon the accused to repay the cheque amount, for which, the accused sent a reply notice dated 26.05.2004, wherein, the accused took a stand that he had borrowed a sum of Rs.25,000/- on 07.03.2002 from the complainant and for that borrowal, the accused had given a blank cheque dated 05.05.2004, which has been filled up by the complainant. The complainant initiated a prosecution in C.C.No.485 of 2004 before the learned Judicial Magistrate-V, Salem under Section 138 of the Negotiable Instruments Act, 1881 against the accused.

3. On the appearance of the accused, he was questioned about the allegations and he denied the same. The complainant examined himself as PW-1 and marked four exhibits. The incriminating circumstances were put to the accused under Section 313 Cr.P.C., which were denied by him. On behalf of the accused, Shanmugam/DW-1 and Sivakumar/DW-2 Branch Manager of the Central Bank of India were examined and a pocket note book was marked as Ex.D1. After analysing the evidence on record, the Trial Court, by judgment dated 19.12.2006, convicted the accused under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo 9 months Rigorous Imprisonment and awarded compensation of Rs.3,00,000/- under Section 357 Cr.P.C. Challenging the conviction and sentence, the accused filed CrI.A.No.5 of 2007 before the learned Additional District and Sessions Judge (Fast Track Court-III), Salem. The First Appellate Court, by order dated 14.06.2007, acquitted the accused, challenging which, the complainant has filed the present appeal against the acquittal, with a condonation of delay. The delay was condoned and special leave was granted.

4. Heard Mr.P.Jagadeesan, learned counsel for the complainant and Mr.R.Marudhachalamurthy, learned counsel for the accused.

5. Mr.P.Jagadeesan, learned counsel for the complainant submitted that the First Appellate Court has erred in acquitting the accused, by placing reliance upon the evidence of Shanmugam/DW-1 and Sivakumar/DW-2 Branch Manager of the Central Bank of India, ignoring the admission of the accused in his reply notice dated 26.5.2004, wherein, he had admitted that he had issued the impugned cheque.

6. Per contra, Mr.R.Marudhachalamurthy, learned counsel for the accused refuted the submissions.

7. In Arulvelu and Another Vs. State Rep. by The Public Prosecutor and Another [(2009) 10 SCC 206] stated as follows:-

"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."

8. It is the specific case of the complainant that the accused borrowed a sum of Rs.3,00,000/- on 05.03.2004. In the cross-examination, the complainant has stated that the said sum of Rs.3,00,000/- was paid by cash. The complainant did not obtain any other documents like promissory note, etc., from the accused for the said loan. However, the accused, in his defence evidence, has established that he has been having financial dealings with the complainant for a long time and that the complainant would give hand loan of Rs.25,000/- every time, for which, a pocket note book is required to be maintained. Whenever the accused makes the repayment to the complainant, the latter would make an entry in the pocket note book for the same. Therefore, the accused has reasonably established that he was having financial dealings with the complainant and that the complainant would give small hand loan of Rs.25,000/-, for which, the pocket note book was the evidence.

9. In such view of the matter, the assertion of the complainant that he had given a sum of Rs.3,00,000/- by cash as loan on interest to the de facto complainant without any document like the pocket note book, does raise a reasonable suspicion in the mind of the Court. The complainant has admitted in his cross-examination that he had given the loan of Rs.3,00,000/- for interest, but, in the complaint, the complainant has stated that he had given the loan of Rs.3,00,000/- on 05.03.2004 and for the same amount, the complainant has given a cheque dated 05.05.2004 without any interest component. This also makes this Court to think twice about the contention of the complainant because, according to the complainant, he had given a sum of Rs.3,00,000/- as hand loan for interest, whereas, the cheque does not include the interest component.

10. In view of the above, this Court does not find any perversity in the order of the acquittal made in C.A.No.5 of 2007 by the learned Additional District Sessions Judge, (Fast Track Court No.2), Salem dated 14.06.2007 warranting any interference by this Court.

11. In the result, the Criminal Appeal is dismissed as being devoid of merits.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmi

To

1.The Judicial Magistrate No.V,
Salem.

2.The Additional District Sessions Judge,
(Fast Track Court No.2), Salem.

+1 cc to Mr.R.Marudhachalamurthy Advocate sr 77553

+1 cc to Mr.P.Jagadeesan Advocate sr 77335

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