IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE Mrs.JUSTICE **R.HEMALATHA**

Criminal Appeal No.608 of 2008

L.M.Krishnan .. Appellant

Vs

V.Karunanidhi .. Respondent

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., praying to set aside the judgment of acquittal passed by the trial Court in C.C.No.11043 of 2006, dated 26.06.2008 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai.

For Appellant : Mr.T.Munirathinam Naidu

For Respondent : No Appearance

JUDGEMENT

The present appeal has been filed against the judgment dated 26.06.2008 passed in C.C.No.11043 of 2006 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai.

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

3. The brief case of the complainant/appellant is as follows:-

The accused V.Karunandihi residing at Door No.487, Anna Salai, Executive Engineer Office, Nandanam, Chennai is known to him and that on 16.02.2006, he had taken a loan of Rs.1,00,000/- from the complainant after executing a promissory note (Ex.P.1). He also issued a cheque dated 11.03.2006 bearing No.301190 for Rs.1,50,000/- drawn on Syndicate Bank, Nandanam Branch to liquidate the loan along with interest. When the said cheque was presented by the complainant in Tamil Nadu Mercantile Bank, Old Washermanpet branch account, it was returned on 17.02.2006 vide return memo (Ex.P.2) for the reason "insufficient funds". Hence, the complainant issued a legal notice dated 24.02.2006 (Ex.P.3) to the accused demanding money and the said notice was returned unserved with an endorsement "not claimed". According to the complainant, no payment was forthcoming from the accused and therefore, he filed a complaint before the learned XVI Metropolitan Magistrate, George Town, Chennai for the offence punishable under Section 138 of the Negotiable Instruments Act.

4. In the trial Court, the complainant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.4. The accused also examined himself as D.W.1. However he did not mark any documentary evidence on his side.

5. The accused had contended that the complainant was not known to him, that he never took any loan from the complainant and that he did not issue any cheque to the complainant. He further contended that for getting financial assistance, he approached his house owner, in which, he was residing in Adyar and that she referred him to Kovilpatti Nadar Sangam which is for Nadars residing at Chennai, that he joined a chit for Rs.1,00,000/- in February 2003, for which, he remitted Rs.4,000/- p.m till April 2003 and bid for the amount of Rs.60,000/- in May 2003 and that all these transactions took place orally.

6. According to the accused, his house owner Tmt.Vanitha introduced him to four elderly persons, who were in Kovilpatti Nadar Sangam and that no receipt was issued to him for the payments made by him. However he continued to remit the chit installment amount of Rs.4,000/- up to March 2005. The further contention of the accused is that a cheque bearing No.301190 drawn on Syndicate Bank, Nandanam Branch was handed over to one of the four elderly persons, that after the expiry of the term of the chit in March 2005, he had demanded the blank cheque and that the cheque was not returned despite, several futile attempts to get it back, that all the four elderly persons were unknown to him and that he came to know that the said cheque was misused by the complainant only after he received the notice Ex.P.3 issued by the complainant.

7. It is seen that the complainant, in his cross examination, came out with a different version that the accused was known to one Muthupandy, who is the relative of the complainant, that the accused had approached the said Muthupandy for financial assistance for his son's education, and that the amount was given to the said Muthupandy, who in turn gave it to the accused. His further contention is that the Nadar Sangam has its registered Office on LB Road, Adayar, that the said Muthupandy was working as an Accountant in the said Sangam, that he(complainant) was the President of the Nadar Sangam for 27 years, that there is no mention about this either in the complaint or legal notice, that the amount was handed over to the accused by Muthupandy in the presence of the complainant in the said Office, that the accused's friend was also present and that the complainant had no knowledge whether any document in writing was obtained for the loan. The further averments of the complainant during his cross examination are that the said Muthupandy was charged of cheating and a police case was filed based on the complaint given by the complainant in his capacity as the President of Nadar Sangam, that this was the reason why Muthupandy was not brought in as a witness and that the said Muthupandy was on bail. Thus the complainant during the course of cross examination had brought in new facts which were not found either in his complaint or in his legal notice.

8. The accused, on his behalf claimed that he does not know Muthupandy, that he is not also known to the complainant either and that the Tmt.Vanitha, house owner of the house in which he resided in Adayar, whose present whereabouts are not known to him, introduced him to four elderly persons, who were in Kovilpatti Nadar Sangam.

9. The learned XVI Metropolitan Magistrate, George Town, Chennai has observed that the accused cannot claim ignorance of four elderly persons in the Nadar Sangam premises, especially when the accused had remitted Rs.4,000/-as chit installments for 25 months, going to the office premises personally. Similarly, the accused claim of not knowing the complainant is also unbelievable as the complainant has been the President of the Nadar Sangam for 27 long years and a fact which has not been refuted by the accused. The version of the accused that a blank cheque was given to one of the four elderly persons whose name is not known also lacks credibility. Similarly the reason cited by the accused that Tmt.Vanitha, the house owner of the house in which he had resided was not brought as a witness as he did not know her whereabouts is also not convincing. The contention of the accused that the notice dated 24.02.2006 demanding the amount of the dishonoured cheque was not received by the accused was also not accepted by the trial Court in the light of the fact that the endorsement "not claimed" on the postal cover by the postal authorities. In fact, the accused in his deposition had

claimed that till such notice he was not aware of the "misuse" of his cheque and this statement contradicts his claim that he was not aware of the notice since he did not receive it.

10. Moreover the trial Court has also opined that the loan amount is only Rs.1 lakh at 24% interest p.a., as deposed by the complainant, the total amount if the interest has not been repaid throughout the two year period works out to Rs.1,48,000/-whereas the cheque is for Rs.1,50,000/-which is more than the actual amount creating doubt whether the debt is legally enforceable. The complainant has not produced the account books eventhough he claims that he is maintaining them. This have been highlighted by the trial Court. The complainant in his deposition has also categorically contended that he used to lend amounts to various persons and that he would be having a minimum of Rs.6 to 10 lakhs in his house.

11. The accused has also questioned the jurisdiction of XVI Metropolitan Magistrate and the trial Court had acquitted the accused on two grounds:

a). The complainant had not proved the existence of legally enforceable debt since the same is riddled with many unanswered questions and puzzling circumstances.

b). The XVI Metropolitan Magistrate Court does not have territorial jurisdiction to try the complaint.

12. On a close scrutiny of the records, the following glaring aspects are seen.

(i). The complainant has not approached this Court with clean hands. He had initially suppressed the material facts like the loan given to the accused through another person, and not obtaining any documents in writing for the loan given.

(ii). The complainant had also suppressed his involvement in the Nadar Sangam as President of the body for 27 long years.

(iii). The accused on his part has feigned ignorance as to the identity of the complainant and his ally one Mr.Muthupandy, to whom presumably the blank cheque was handed over.

iv). The accused has also suppressed the fact that he did not know the whereabouts of one Vanitha, the owner of the house, in which, he was residing in Adyar and who was instrumental in his introduction to the Nadar Sangam.

v). He has also not attempted to prove either the chit fund which he was a member, or the reason for parting with a blank cheque to the unknown person.

vi). However the complainant had also failed to prove his initial burden that there was a legally enforceable debt. He has has not come clean on his position in the said Nadar Sangam, the position held by the said Muthupandy in the Sangam as an accountant, the cheating case against Muthupandy filed by the complainant etc., make the entire case murkier and weakens the case of the complainant.

Vii). The total amount if calculated at the rate of 24% p.a., for 2 years works out to Rs.1,48,000/- and the cheque is issued for Rs.1,50,000/-. This creats a doubt on the case of the complainant.

Viii). The complainant who initially averred that a promissory note was obtained for the loan amount, the cross examination revealed that it was not so. Moreover, the fact that the money was his but given to one Muthupandy to be given to the accused itself marginalises the claim of the complainant.

ix). As regards the jurisdictional aspect, the learned XVI Metropolitan Magistrate, George Town, Chennai had relied on the apex Court's ruling in **ALIAN MANI vs. STATE OF KERALA AND ANOTHER (2006 (6) SCC 39).** However the new sub-section (2) inserted in Section 142 of the Negotiable Instruments (amendment) Act 2015, which has come into force from 15th June 2015 has made a uniform Rule as to the jurisdiction.

13. However, since the transaction pertains to the year 2006, the finding of the learned XVI Metropolitan Magistrate, George Town, Chennai that the said Court does not have jurisdiction to try the case holds good. Similarly the finding of the trial Court that the complainant

had failed to prove that there was a legally enforceable debt cannot also be assailed in the light of the above observations made by this Court. The learned XVI Metropolitan Magistrate, George Town, Chennai has analysed the entire evidence on record and has given cogent reasons for acquitting the accused and I therefore see no reasons to interfere with the findings of the learned XVI Metropolitan Magistrate, George Town, Chennai.

14. In the result, the appeal fails and the same is dismissed. The judgment of acquittal passed in C.C.No.11043 of 2006 on 26.06.2008 by the learned XVI Metropolitan Magistrate is confirmed.

21.12.2017

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Index:Yes/ No

R.HEMALATHA, J.,

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To

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

2.The Public Prosecutor,
   High Court, Madras.

Crl.A.No. 608 of 2008

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