IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2017

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THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

CRL.A.No.403 of 2016

V. Chandra Sekar ... Appellant/Complainant

.vs.

S.Sowkath Ali ... Respondent/Accused

PRAYER : Criminal Appeal filed under Section 378(4) of Cr.P.C., to call for the records pertaining to the judgment dated 25.08.2015 passed by the learned Judicial Magistrate, Fast Track Court, Hosur in S.T.C.No.69 of 2015 acquitting the respondent under section 138 of the Negotiable Instruments Act and set aside the same.

For Petitioner : Mr.A.Balamurugan

For Respondents : Mr.K.Kannan
Mr.C.V.Chanranya

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Judgment

The appellant is the complainant in S.T.C.No.69 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court, Hosur. He has filed the complaint

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for the offence under Section 138 of Negotiable Instruments Act. He has alleged that he lent Rs.7,00,000/- to the respondent on 14.05.2014. According to him, the respondent promised to repay the amount within three months and for the discharge of the said liability, he has issued a cheque dated 14.05.2014 for Rs.7,00,000/- and it was taken back by him. Subsequently, he issued the cheque in question dated 11.12.2014 (Ex.P1) for Rs.7,00,000/- and when the cheque was presented for collection, it was dishonored by the bank with remarks "insufficient funds" (Ex.P2). The complainant has issued a legal notice dated 09.01.2015 (Ex.P3) to the respondent, calling upon him for repayment. But the said notice was returned unserved (Ex.P4). Thereafter, the appellant filed the complaint. In support of his case, he examined himself as Pw1 and marked 5 documents. The respondent/ accused pleaded not guilty. His defence is that he has borrowed Rs.50,000/- from the complainant and at the time of taking loan, he handed over an unfilled signed cheque and it was misused by the complainant, to file the present complaint. Before Trial Court, he examined his Bank Manager as Rw1and himself as Rw2 and marked the Statement of accounts as Ex.R1. The Trial Court has accepted the case of the respondent and come to the conclusion that the complainant has failed to prove his case beyond reasonable doubt and acquitted the accused. Aggrieved by the order of acquittal, the complainant has preferred this appeal.

2. The learned counsel appearing for the appellant would submit that the Trial Court has committed error in acquitting the accused, that the Trial Court

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has not taken note of the Provisions under Sections 138 and 139 of Negotiable Instruments Act and that therefore, the order of the Trial Court is liable to be set aside.

3. I have perused the judgment of the Trial Court and the grounds taken in the Appeal. It is not in dispute that the cheque belongs to the respondent and it bears his signature. Therefore, the Court shall presume that the cheque was issued for discharge of legally enforceable debt. However, the presumptions drawn under Section 138 and 139 are rebuttable. It is to be seen whether there are materials to rebut the said presumption.

4. It is the definite case of the complainant/ appellant that he lent Rs.7,00,000/- on 14.05.2014. However, in his evidence, he has stated that he lent Rs.3,00,000/- during the year 2000 and another Rs.3,00,000/- in the year 2014 and charged Rs.1,00,000/- towards interest and for the discharge of the said liability, the cheque has been issued by the respondnet. These circumstances are sufficient to conclude that presumptions drawn under Section 139 of Negotiable Instruments Act are rebutted. Once the presumptions are rebutted, it is for the complainant to prove that he has lent Rs.7,00,000/- and the cheque was issued for the discharge of Rs.7,00,000/-. As already noticed, the appellant has claimed that he has lent Rs.7,00,000/- on 14.05.2014. A perusal of records show that no interest has been charged. It is impossible to believe that he has lent Rs.7,00,000/- to the respondent

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without any agreement for payment of interest.

5. The Hon'ble Supreme Court in ***KRISHNA JANARDHAN BHAT vs. DATTATRAYA G. HEGDE [(2008) 4 SCC 54]*** has held that Courts have to take notice that ordinarily in terms of Section 269-SS. Income Tax Act, any advance taken by way of loan of more than Rs.20,000/- had to be made by an account payee cheque only. Therefore, the case of the appellant cannot be believed, in the absence of any contemporaneous document to show that the appellant had actually lent Rs.7,00,000/- to the respondent The Trial Court was justified in coming to the conclusion that the appellant has failed to prove his case beyond reasonable doubt. The Appeal is against an order of acquittal. The Trial Court has taken a reasonably possible view and I do not find any valid reason to hold a different view.

6. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court, Hosur, in S.T.C.No.69 of 2015 on 25.08.2015 is hereby confirmed.

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Index : Yes/No
Internet : Yes
Speaking order/Non speaking order
mst

To

1. The Judicial Magistrate,

Fast Track Court,
Hosur.

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N.AUTHINATHAN, J

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