

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.641 of 2007

R.Mahesh Babu
S/o.K.Rajendran

.. Appellant

Vs.

P.B.Anandan
S/o.Panchanathan

.. Respondent

Criminal Appeal preferred under Section 378 of Cr.P.C. against the judgment of learned Additional District and Sessions Judge/Fast Track Court I, Coimbatore, passed in C.A.No.12 of 2007 on 31.05.2007 reversing the judgment of learned Judicial Magistrate I, Coimbatore, passed in C.C.No.782 of 2004 on 21.12.2006.

For Appellant : Mr.B.R.Shankaralingam

For Respondent : Mr.N.Damodaran

J U D G M E N T

This appeal arises against the judgment of acquittal passed by learned Additional District and Sessions Judge/Fast Track Court I, Coimbatore, passed in C.A.No.12 of 2007 on 31.05.2007.

2. Appellant/complainant has filed C.C.No.782 of 2004 on the file of learned Judicial Magistrate I, Coimbatore, under Section 138 of the Negotiable Instruments Act against respondent herein informing that he had issued a cheque bearing No.264985 dated 01.07.2004 drawn on Vysya Bank, R.S.Puram Branch, in a sum of Rs.1,50,000/- towards repayment of borrowing, which upon presentation was returned unpaid for the reason 'Account closed'. Appellant/complainant caused statutory notice in keeping with section 138 of the Negotiable Instruments Act and preferred the complaint.

3. Before the trial Court, appellant/complainant examined himself and marked five exhibits. Three witnesses were examined on behalf of the defence and three exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 21.12.2006, convicted the respondent and sentenced him to 4 months S.I. and fine of Rs.2,000/- i/d 1 month S.I. Against such finding, respondent preferred C.A.No.12 of 2007 on the file of learned Additional District and Sessions Judge/Fast Track Court I, Coimbatore. Appellate Court, under judgment dated 31.05.2007, acquitted the respondent. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned counsel for respondent.

5. In acquitting respondent, appellate Court has found that it was the case of respondent that he has participated in the chit conducted by appellant/ complainant, that he has taken a chit in a sum of Rs.1,00,000/- and while giving such amount, appellant/complainant has received Ex.P1 - pronote and Ex.P2 - cheque towards security and misused the same towards foisting a false case. To substantiate such contention, respondent has examined Bank Manager of Vysya Bank as PW-2 and one Ramalingam Pillai as PW-3 and marked three documents. Though it was the case of appellant/complainant that the respondent and his wife borrowed money from him for their business purposes, he has failed to mention what business the respondent is doing. Further, to the question raised before the appellant/complainant whether the respondent has participated in his chit transaction, he has replied that after verification of records only he could be able to reply. Though the respondent has moved a petition u/s.91 Cr.P.C. towards marking of documents, appellant/complainant has not come forward to mark the records to substantiate his contention. It was the evidence of PW-2, Bank Manager, that the account of respondent has been closed as early as on 15.03.2000. The subject cheque bears the date 01.07.2004. When once the appellant/complainant himself has admitted that respondent has given the cheque in blank and the details therein have been filled later, then it should be presumed that the cheque has been given at an earlier point of time and the same has been misused by putting the date 01.07.2004 i.e., a date, 4 years after closing of the account. For the above reasons and for other reasons, appellate Court has held that appellant/ complainant has failed to prove his case and respondent has proved his case by examining witnesses and producing documents. This Court finds that a well-reasoned approach has been adopted by appellate Court in acquitting the respondent.

The Criminal Revision Case shall stand dismissed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

To

1. The Additional District and Sessions Judge/Fast Track Court No I, Coimbatore.
2. The Judicial Magistrate No.I, Coimbatore.

+1cc to Mr.B.R.Shankaralingam, Advocate Sr. 47761

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