IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE N.AUTHINATHAN

Crl.A.No.452 of 2016

C.P.Shanmugasundaram [PETITIONER]

Vs

R.Ramkumar [RESPONDENT]

PRAYER: Criminal Appeal filed under Section 378(4) of the Criminal Procedure Code to call for the records and set aside the order of acquittal passed by the Judicial Magistrate, Fast Track Court, Magisterial Level II, Coimbatore in C.C.No.20 of 2013 on 18.06.2015 and pass an order of conviction against the respondent with the maximum punishment.

For Petitioner	:	Mr.K.S.Karthik Raja
For Respondent	:	Mr.R.Venkatachalapathy for M/s K.Sudhakar

JUDGEMENT

The complainant in C.C.No.605 of 2002 on the file of the Judicial Magistrate No.II, (Fast Track Court, Magisterial Level), Coimbatore, is the appellant herein and it is a case filed for the offence under Section 138 of Negotiable Instruments Act. The complaint has been filed on the allegations that the respondent herein has borrowed a sum of Rs.4,00,000/- on 17.07.2012 and agreed to repay the same with interest at 18% p.a. The further case of the complainant is that the respondent has issued a cheque on 16.08.2012 for Rs.50,000/- in partial discharge of the said debt and the cheque was honoured and he has realized the amount. The complainant alleged that for the discharge of remaining debt, on 25.08.2012, the respondent has issued the cheque in question for Rs.3,50,000/- and when the cheque was presented for encashment, it was dishonoured for the reason " insufficient funds" in the account of the respondent. Thereafter, the petitioner has issued a notice, calling upon the respondent to pay the amount covered by the cheque and as there was no reply from him, he has filed the complaint. In support of the case of the complainant, he examined himself as PW1 and marked Ex.P1 to Ex.P6.

2. The respondent has taken a plea that he has borrowed a sum of Rs.1,00,000/- from the complainant in the year 2001 and at the time of taking loan, the complainant obtained unfilled promissory note and unfilled signed cheque from him. He has also alleged that dispute has arisen regarding payment of interest and thereafter, the complainant filled in the cheque and promissory note and has filed the present case. According to him, he has not borrowed Rs.4,00,000/-from the complainant, as alleged by him on 17.07.2017. The respondent examined one bank official i.e. Manager of the Syndicate Bank, Ram Nagar as Dw1 and marked two documents. The Trial Court has accepted the case of the respondent and come to acquit the respondent. Challenging the order of acquittal, the petitioner has preferred this Appeal.

3. The learned counsel appearing for the petitioner would submit that the Trial Court has committed error in accepting the case of the respondent, that Ex.D1 cheque though dated 16.05.2012, was encashed only on 16.08.2012, that the Trial Court has failed to note that the respondent has not sent any reply to the legal notice sent by the complainant; and that the Trial Court has failed in not taking note of the fact that the Ex.D1 cheque was honoured and no objection has been raised by the respondent and no action

was taken by him for collection of the amount under Ex.D1 cheque.

4. The learned counsel appearing for the respondent would submit that the Trial Court on the materials available on record, has reached a reasonable conclusion and the view taken by the Trial Court is a possible view on the evidence and that therefore, there is no ground for interference.

5. The definite case of the complainant is that he lent Rs.4,00,000/- on 17.07.2012 and the respondent has agreed to repay the same with interest at 12% p.a. According to him, the respondent executed a promissory note and the copy of the same has been marked as Ex.P1. However, the original promissory note was not filed and no one signed as witness in the said document. The complainant has stated that the respondent has issued a cheque on 16.08.2012 for Rs.50,000/- in partial discharge of the said loa n, but it was realized only on 16.08.2012, as per Ex.D2, statement of account. However, there is no explanation as to why he has accepted the cheque dated 16.05.2012, when he claimed that the respondent borrowed the amount only on 17.07.2012. This circumstances is sufficient to rebut the presumption under Section 139 of Negotiable Instruments Act. In order to rebut the presumption, the respondent can rely on the evidence adduced by the complainant. The materials on record would clearly establish that the

respondent has raised a probable defence. Once the presumption under Section 139 of Negotiable Instruments is rebutted, it is for the complainant to prove that he has lent Rs.4,00,000/- on 17.07.2012 as claimed by him. It is true that the respondent has not sent any reply to the legal notice Ex.P5. However, that alone is not sufficient to accept the case of the complainant that he has lent Rs.4,00,000/- on 17.07.2012 to the respondent. Rs.4,00,000/- is not a small amount. It is significant to note that no interest was charged and the cheque was only for Rs.3,50,000/-. It is impossible to believe that the complainant lent Rs.4,00,000/- without requiring presence of any witness.

6. 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. In the light of the observations of the Hon'ble Supreme Court, it can be safely concluded that the complainant has not proved that the cheque in question was issued for the discharge of legally enforceable debt. The appellant has not proved his case for an offence under Section 138 of the Negotiable Instruments Act. The Trial Court has taken a possible view on the basis of the materials and I do not find any valid reason to differ from the view taken by the Trial Court.

7. In the result, the Criminal Appeal is dismissed and the judgment of acquittal passed by the Judicial Magistrate, Fast Track Court, Magisterial Level II, Coimbatore in C.C.No.20 of 2013 on 18.06.2015 is hereby confirmed.

08.08.2017

Index : Yes/No
Internet : Yes
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To

1. The Judicial Magistrate,
   Fast Track Court at Magisterial Level-II,
   Coimbatore.

N.AUTHINATHAN, J.

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