

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.659 of 2007

Rathinasamy

..Appellant/Complainant

Vs

1.M/s.Geetha Hosieries,
Rep. by its Partner,
R.Sadasivam,
Palakattu Thottam,
15, Velampalayam,
Tirupur 641 652.

2.R.Sadasivam

3.S.Geetha

4.S.Santhi

..Respondents/Accused

Prayer:- Criminal Appeal filed under Sections 378 of the Code of Criminal Procedure, to set aside the order of acquittal made under the judgment dated 19.06.2007 made in S.T.C.No.3932 of 2006 on the file of the Judicial Magistrate No.II, Tirupur and convict the respondents herein for the offence under Section 138 of the Negotiable Instruments Act.

For Appellant : Ms.Zeenath Begum
for Mr.Murugamanikkam

For Respondents : No Appearance

* * * * *

WEB COPY
J U D G M E N T

The present appeal has been filed by the complainant against the order of acquittal passed in S.T.C.No.3932 of 2006, dated 19.06.2007 by the learned Judicial Magistrate No.II, Tirupur under Section 138 of the Negotiable Instruments Act.

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

(i)The first respondent/first accused is the company and the respondents 2 to 4 are the partners of the first

respondent company. On 15.03.2004, the second respondent/A.2 borrowed a sum of Rs.2,30,000/- with interest at the rate of 24% per annum from the complainant and he executed a pro-note for the same. Subsequently, in order to discharge the debt, the second respondent on behalf of other respondents issued a cheque for a sum of Rs.2,30,000/- drawn on Indian Overseas Bank, Velampalayam branch. When the Cheque was presented by the complainant for collection, it was returned on the ground that "Account already closed". Hence, on 29.07.2005, the complainant sent a legal notice to the respondents and the same was received by respondents 1 and 2 on 1.8.2005 and respondents 3 and 4 on 4.8.2005, the complainant also received the acknowledgment card on 06.08.2005. Even after the receipt of the notice, they failed to repay the borrowed amount, hence, the complainant filed a complaint for an offence under Section 138 of the Negotiable Instruments Act.

(ii) In order to prove the case, the complainant examined himself as P.W.1 and Exs.P.1 to P.11 were marked.

(iii) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false and they examined one Aruldoss, Head Constable as R.W.1 and marked the original complaint as Ex.D.1.

(iv) The case of the respondents/accused is that the respondents never received any amount as mentioned in the complaint. Earlier, the complainant himself filed a complaint against the second respondent herein and one Sundaram stating that they have borrowed a sum of Rs.4,78,140/- and executed a pro-note and issued a Cheque, but they failed to repay the same and he sought to take action against the accused. So, the above said complaint has been forwarded to the Central Crime Branch, Tiruppur. The said complaint has been taken on file and numbered as C.C.P.No.112 of 2005. During investigation both the parties agreed to settle their dispute before the Civil Court, hence, the said complaint has been closed. Thereafter, the present complaint has been filed alleging that the second respondent borrowed a sum of Rs.2,30,000/- and issued the cheque.

(v) Having considered all the above materials, the trial Court acquitted the accused stating that the complainant failed to prove the payment of the loan amount to the accused, even though the pro-note was marked, neither the attester nor the witness was examined before this Court to prove that the loan amount was given to the accused. Aggrieved by the order of acquittal, the present Criminal Appeal has been filed.

3. I have heard Ms.Zeenath Begum, learned counsel for the appellant and I have also perused the records carefully. Even though notice has been served on the respondents and their names have been printed in the cause list, there is no representation on behalf of them.

4. It is the specific case of the appellant that the second respondent borrowed a sum of Rs.2,30,000/- for his family expenses, and to discharge the debt, he issued a cheque in the name of the first respondent.

5. From the records it is seen that prior to the filing of the complaint dated 2.9.2005, the complainant himself filed a complaint before the Central Crime Branch, Tiruppur stating that the second respondent received a sum of Rs.1,03,000/- and one Sundaram received a sum of Rs.1,27,400/- and they executed a pro-note on 15.03.2004. But, they have failed to repay the said amount to the complainant.

6. The respondents/accused marked the earlier complaint given by the complainant as Ex.D.1 and also examined one Aruldoss, the Head Constable in the Central Crime Branch, Tiruppur as D.W.1, to prove that there was a mediation between the parties and they have agreed for settlement, with the above probable defence, The initial burden on the respondents/accused has been raised by the respondent and the burden shifted on the complainant to prove that there is a legally enforceable debt or liability, but, there is no evidence to prove the same.

7. In the above said circumstances, the Court below acquitted the accused holding that there is no evidence to show that the complainant advanced loan to the appellants. I find no illegality or irregularity or perversity in the judgment of the trial Court and I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same deserves to be dismissed.

8. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court passed in S.T.C.No.3932 of 2007, dated 19.06.2007 by the learned Judicial Magistrate No.II, Tirupur is hereby confirmed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate, No.II,
Tirupur.

2.do thro'The Chief Judicial Magistrate, Tiruppur.

Copy to:
The Section Officer,
V.R.Section,
High Court,Chennai.

+1 cc to Mr.T.Murugamanickam,advocate,sr.7068.

br(co)
krd 20/4

Cr1.A.No.659 of 2007



WEB COPY