

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

CrI.A.No.618 of 2012

K.Ashokan .. Appellant/Respondent/Complainant
Vs.

M.Senthil Kumar
S/o.Muthusamy Gounder,
Proprietor,
M/s.T.V.S.Bolt Land,
Akilmedu 7th Street,
Sait Colony, Erode - 1. Respondent/Appellant/Accused

Criminal Appeal filed under Section 378 of Cr.P.C. against the order of acquittal dated 27.06.2012 passed in C.A.No.88 of 2011 by the III Additional District and Sessions Judge, Salem reversing the judgment dated 29.08.2001 made in CC NO.126 OF 2009 on the file of the Judicial Magistrate NO.I, Sankari.

For Appellant : Mr.R.Marudhachalamurthy

For Respondent : Mr.T.Ganesan

J U D G M E N T

For the sake of convenience, the appellant and the respondent would be referred to as complainant and accused.

2. It is the case of the complainant that the accused borrowed Rs.one lakh on 04.05.2009 and in discharge of the said liability, the accused issued two cheques for Rs.50,000/- each, both dated 03.06.2009 drawn on IDBI Bank, Erode Branch in favour of the complainant. When the complainant presented the two cheques on 17.06.2009 at his bank, namely, Bank of Baroda, Erode, the two cheques were returned on 18.06.2009 with endorsement 'insufficient funds'. The complainant contacted a counsel at Sankari and issued a statutory notice dated 29.06.2009 to the accused which was received by the accused on 30.06.2009. Since the accused did not come forward to make the payment, the complainant initiated a prosecution in STC.No.126 of 2009 before the Judicial Magistrate No.I, Sankari, Salem District under section 138 of the Negotiable Instruments Act against the accused.

3. On receipt of summons, the accused appeared before the learned Magistrate and denied the accusation. The complainant examined himself as P.W.1 and marked 5 documents.

4. When the accused was questioned about the incriminating circumstances under section 313 Cr.P.C., he denied the same. No witness was examined on behalf of the accused and no document was marked.

5. After considering the evidence on record and hearing the complainant and the accused, the Judicial Magistrate No.I, Sankari convicted the accused for the offence under section 138 of the Negotiable Instruments Act and sentenced him to undergo one year imprisonment.

6. Aggrieved by the conviction and sentence, the accused filed Criminal Appeal in C.A.No.88 of 2011 before the III Additional District and Sessions Court, Salem and the accused was acquitted. Challenging the acquittal, the complainant is before this Court.

7. Heard the learned counsel for the complainant and the learned counsel for the accused.

8. On a reading of the appellate Court judgment, it is seen that the accused has been acquitted on the short ground that the Judicial Magistrate No.I, Sankari, does not have territorial jurisdiction to try the case since all the transactions in question had taken place within the jurisdiction of the Judicial Magistrate, Erode. The counsel for the accused has relied upon the Judgment of the Supreme Court in Harman Electronics (P) Ltd. and another Vs. M/s.National Panasonic India Ltd. (AIR 2009 SCC 1168) wherein, the Supreme Court has held that the place of issuance of statutory notice will not confer any jurisdiction. However, the first appellate Court has not given any finding with regard to the evidence adduced by the parties in the case. It may be necessary to extract S.460 (e) Cr.P.C. and Section 462 Cr.P.C.

"460(e). Irregularities, which do not vitiate proceedings.

If any Magistrate not empowered by law to do any of the following things, namely.

(e) To take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;"

"462. Proceedings in wrong place.

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that

such error has in fact occasioned a failure of justice."

9. Thus from a reading of the above, it is clear that if a Court which lacks territorial jurisdiction, but is otherwise, competent to try a case, tries the case and convicts the offender, the appellate Court can interfere only if it is shown that failure of jurisdiction had occasioned. In this case, the accused was not tried in a far off Court. He was tried by the Judicial Magistrate No.I, Sankari , which is situated about 18 kms from the court of Judicial Magistrate, Erode. Even during the trial, the accused did not complain of any prejudice. He had participated in the trial and cross examined the witness without demur. Therefore, the first appellate Court ought not to have set aside the judgment of the trial Court, ignoring the provisions of Sections 460(e) and 462 of Cr.P.C..

10. In the result, this appeal is allowed and the judgment dated 27.06.2012 passed in C.A.No.88 of 2011 by the III Additional District and Sessions Judge, Salem is set aside and the matter is remanded to the III Additional District and Sessions Judge, Salem for fresh disposal in accordance with law on the merits of the case and not on technicalities of territorial jurisdiction. The complainant and the accused shall appear before the III Additional District and Sessions Judge, Salem on 04.12.2017 at 10.30 a.m. In the meantime, the Registry is directed to send the original records, if received, to the III Additional District and Sessions Court, Salem.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vrc

To

1. The III Additional District and Sessions Judge, Salem.
2. The Judicial Magistrate No.I, Sankari

Copy to

The Section Officer,
Criminal Section, High Court,
Chennai.

+1 C.C. to M/S. R.Marudhachalamurthy Advocate SR.NO.73217

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GMR (CO)

VS 10,11,2017

<https://hcservices.ecourts.gov.in/hcservices/>

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