

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CrI.A.No.800 of 2012

K.Ashokan ... Appellant/Complainant

Vs

M.Senthilkumar ... Respondent/Accused

Prayer:

Criminal Appeal filed under Section 378 of Cr.P.C. praying to set aside the judgment dated 27.06.2012 made in C.A.No.87/2011 on the file of III Additional District and Sessions Judge, Salem reversing the judgment dated 29.08.2011 made in S.T.C.No.2772 of 2009 on the file of the Judicial Magistrate No.I, Sankari by allowing this appeal.

For Appellant : Mr.R.Marudhachamurthy

For Respondent : Mr.T.Ganesan

J U D G M E N T

This appeal has been filed by the appellant seeking to set aside the judgment dated 27.06.2012 made in C.A.No.87 of 2011 on the file of the learned III Additional District and Sessions Judge, Salem, reversing the judgment dated 29.08.2011 made in S.T.C.No.2772 of 2009 on the file of the learned Judicial Magistrate No.I, Sankari.

2.For the sake of convenience, the parties will be referred to as 'complainant' and 'accused'.

3.It is the case of the complainant that on the instructions of the accused, he gave a hand-loan of Rs.60,000/- to one Thavasirajan. On 17.06.2009, in discharge of which, Thavasirajan handed over two cheques bearing Nos.265490 & 048418, both dated 03.06.2009, drawn in the name of Thavasirajan, that was issued by the accused. The two cheques were presented on 18.08.2009 and they were dishonoured for 'insufficiency of funds'. The complainant issued statutory notice under Section 138 of the Negotiable Instruments Act to the accused on 12.09.2009 and the same was received by the accused on 14.09.2009. The accused neither paid the sum of

Rs.60,000/- nor issued any reply notice to the statutory notice and hence, the complainant initiated prosecution in S.T.C.No.2772 of 2009 before the learned Judicial Magistrate No.I, Sankari, under Section 138 of the Negotiable Instruments Act against the accused.

4.On appearance of the accused, he denied the substance of accusation. The complainant examined himself as P.W.1 and marked

five Exhibits. The accused was questioned under Section 313 of Cr.P.C. about the incriminating circumstances, which he denied. No witness was examined on behalf of the accused and no document was marked on his side. After considering the evidence adduced by both sides, the Trial Court by judgment dated 29.08.2011 in S.T.C.No.2772 of 2009 convicted the accused and sentenced him to undergo one year rigorous imprisonment for the offence under Section 138 of the Negotiable Instruments Act.

5.Challenging the conviction and sentence, the accused filed Criminal Appeal No.87 of 2011 and the learned III Additional District and Sessions Judge, Salem, by judgment dated 27.06.2012 acquitted the accused. Aggrieved by which, the complainant is before this Court in this Appeal.

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

7.In the case of Arulvelu v. State, reported in (2009) 10 SCC 206, the Hon'ble Supreme Court has held as follows:

" 40. Unquestionably, the appellate court has power to review and reappreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be a perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallised by the aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."

8.Bearing in mind the above said principles, if the evidence on record is viewed, it is seen that the complainant

had not even examined Thavasirajan in order to prove the debt. Admittedly, the cheques were not issued in the name of the complainant, but they were issued in the name of Thavasirajan. Even according to the complainant, the loan amount of Rs.60,000/- was handed over by the complainant to Thavasirajan on 17.06.2009 and not to the accused.

9.In such view of the matter, non examination of Thavasirajan is indeed fatal to the case of the accused. This fact has been elaborately dealt with by the First Appellate Court while acquitting the accused.

10.In the light of the above, this Court is of the view that this is not a fit case to interfere into the acquittal of the accused by the First Appellate Court.

11.In the result, this criminal appeal is devoid of merits and the same is dismissed. The judgment passed by the learned III Additional District and Sessions Judge, Salem, dated 27.06.2012 in C.A.No.87 of 2011 is confirmed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I, Sankari
- 2 The Chief Judicial Magistrate, Sankari
- 3.The III Additional District and Sessions Judge, Salem.
- 4 The Principal and District Sessions Judge, Salem

+1 CC to Mr. R. Marudhachalamurthy, Advocate Sr.No. 71965

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MD: 13/11/2017

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