IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.1322 of 2004

M.Krishna Moorthy ...Appellant/Complainant

vs.

1.M/s.Asia Textiles
A Partnership Firm
539-A, Kamaraj Road,
M.P.Mills Compound,
Tirupur-639 604.

2.R.Subramaniam ... Respondents/Accused

Criminal Appeal preferred under Section 378 Cr.P.C., to set aside the order of acquittal passed against the respondents/accused by the Judicial Magistrate No.III, Coimbatore, in C.C.No.76 of 2001 dated 17.09.2004.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondents: No appearance

JUDGMENT

Challenging the order of acquittal, the complainant filed the present appeal. The appellant/complainant has filed a private complaint against the respondents/accused for the offence under Section 138 of Negotiable Instrument Act, in C.C.No.76 of 2001, on the file of the learned Judicial Magistrate No.III, Coimbatore. The trial Court, after trial, acquitted the respondents/accused. Now, challenging the above said order of acquittal, the present appeal has been filed by the complainant.

2. The case of the prosecution, in brief, is as follows:-
The first respondent is the company and the second respondent is one of the partners of the first respondent company. On 15.05.2000, the second respondent borrowed a sum of Rs.2,00,000/- from the complainant and promised to repay the same with 24% interest per annum. In order to discharge the liability, the second respondent/accused issued a cheque dated 19.07.2000 for a sum of Rs.2,00,000/-, drawn on City

Union Bank Tirupur. When the above cheque was presented before the drawee bank on 22.07.2000 for collection, the cheque was dishonoured with an endorsement "insufficient fund". Then, the appellant/complainant issued a legal notice to the respondents/accused which was returned "unserved". Since the respondents/accused failed to repay the loan amount, the complainant has filed a private complaint. The learned Judicial Magistrate had taken cognizance and issued summons to the respondents.

3. In order to prove the case, the complainant was examined himself as P.W.1, the Assistant Manager of drawee Bank was examined as P.W.2, the Assistant Manager of Indian Bank was examined as P.W.3 and one Kandhasamy was examined as P.W.4 and exhibited 10 documents, namely, Cheque[Ex.P1], Memo issued by the Bank [Ex.P2], Debit Advice[Ex.P3], Legal Notice sent by the complainant[Ex.P4], returned legal notice[Ex.P5], Authorisation letter given by Bank [Ex.P6], Statement of Account maintained by the accused[Ex.P7], Authorisation letter [Ex.P8], Statement of Accounts maintained by the complainant [Ex.P9] and copy of registered sale deed[Ex.P10].

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false and the accused has examined five witnesses and marked 10 exhibits. Out of the witness examined, D.W.1 was working as Clerk in the Bank where the second respondent has maintaining account. He spoke about the money transaction of of A-2 with the Bank. D.W.2 is the President of Handloom Owners Association at Palladam and he is a relative of the appellant. He spoke about the borrowel of Rs.2,50,000/- from D.W.3 and in order to discharge the same, the second respondent issued a cheque to the appellant on behalf of D.W.3. D.W.3 is one Thirumathal, who is sister of appellant. She deposed that she had sold her land and was having a sum of Rs.2,50,000/- being the sale proceeds and she wants to lend money for interest. At that time, the appellant took the second respondent to D.W.3, and D.W.3 in turn gave the amount to the second respondent. At the time, the second respondent has issued a disputed cheque, and the appellant was in custody of the said cheque. Further, the second respondent also executed an agreement to the appellant in respect of said loan amount which was also in possession of the appellant. D.W.4, the brother of the appellant. He has also corroborated the evidence of other defence witnesses. The second respondent was examined himself as D.W.5. He spoke about the borrowel of Rs.2,50,000/- from one Thirumathal D.W.3 and he deny the fact that he has not received any loan amount from the appellant. According to him, at the time of borrowing money from D.W.3, a cheque has been given, which was in the custody of the appellant, now using the same, the present complaint has been filed. Apart from that the respondents exhibited 10 documents to prove their defence. Considering all the above materials, the trial court acquitted the respondents/accused on the ground that

there is no legally enforceable liability. Now, challenging the the above said order of acquittal, the present appeal has been filed.

5. Earlier, notice has been served on the respondents, and their names was also printed in the cause list, but none appeared for the respondents.

6. I have Heard the learned counsel appearing for the appellant and perused the materials available on record.

7. It is the case of the appellant/complainant that the second respondent, who is the partner of the first respondent company, has borrowed a sum of Rs.2,50,000/- as hand loan on 15.05.2000 and in order to discharge the same, the disputed cheque has been issued and the said cheque was presented for collection and the same was returned with an endorsement "insufficient fund". To prove the same, the complainant was examined himself as P.W.1, the Assistant Manager of drawee Bank was examined as P.W.2, the Assistant Manager of Indian Bank was examined as P.W.3 and one Kandhasamy was examined as P.W.4 and exhibited 10 documents.

8. But the case of the respondents is that, the second respondent did not borrow any amount from the appellant whereas it is only D.W.3 Thirumathal, sister of the appellant, wants to lend money for interest, at that time, the appellant took the second respondent to D.W.3 and in turn the second respondent borrowed the amount from D.W.3. At the time of borrowel, the second respondent has executed an agreement as security, which was marked as Ex.D3, and the disputed cheque given to the appellant for custody. Now, using the same, the present complaint has been filed.

9. In support of his case, the second respondent examined five witnesses. Out of the witnesses, D.W.3, who is the sister of the appellant, deposed that she has only advanced amount to A-2. The other witnesses D.Ws.1 and 2 deposed that they are present at the time of borrowel of money and they have also stated that the money advanced only by D.W.3 and there is no material available on record to show that it is only the appellant advanced the money to A-2. The Court below, considering the entire materials, has rightly come to the conclusion that there is no legally enforceable liability and the appellant did not advance any amount to the second respondent, but it is only D.W.3 advanced the amount, and acquitted the accused. I have carefully considered the materials available on record, I find no illegality or irregularity in the order passed by the trial Court. In the said circumstances, the appeal fails and the same is liable to be dismissed.

10. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment dated 17.09.2004 passed in C.C.No.76 of 2001 on the file of the learned Judicial Magistrate No.III, Coimbatore, is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Judicial Magistrate,
No.III, Coimbatore

Copy to:The Section Officer,
Criminal Section,
High Court, Madras

VGI(CO)
sm:5.6.2018

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