

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.1414 of 2002

Dr. S.Bafina

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Appellant /Complainant

Vs

1. East West Supertech Madras Ltd.,
rep. by its Director Mr. T.Palanivelu,
22K, Venus Colony, 2nd street,
Alwarpet, Chennai - 18.

2. T.Palanivelu

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Respondents/Accused

Prayer:- Criminal Appeal filed under Section 378(4) Cr.P.C.,
to set aside the order of the acquittal dated 31.01.2001 passed
by XVII Metropolitan Magistrate Court, Saidapet, Chennai.

For Appellant : Mr. N.Premalatha,
Legal Aid Counsel

For Respondent : No appearance

JUDGEMENT

Challenging an order of acquittal, the complainant filed
the present appeal.

2. The appellant filed a private complaint for an offence
under Section 138 of Negotiable Instrument Act against the
respondents on the ground that the first respondent borrowed a
sum of Rs.2 lakhs, for which, the second respondent is a
guarantor and he promised to repay the loan with 15% p.a and he
has also executed a pronote, Ex.P.8. Subsequently, in order to
discharge the above liability, the respondent issued a cheque
for a sum of Rs.1,60,000/- drawn on Lakshmivillas Bank,
Nungambakkam branch.

3. When the above cheque was presented on 12.12.1996 for
collection, it was returned on the ground of insufficient of
funds. Thereafter, the petitioner issued a legal notice

demanding payment, but the respondent evaded the notice. Since the amount was not paid, the appellant filed a private complaint within a statutory period. In order to prove his case, he examined himself as P.W.1 and also examined the bank manager as P.W.2 and he also exhibited 9 documents. The cheque was marked as Ex.P.1 and the return memo as Ex.P.2, Deposit advice as Ex.P.3, the Legal notice issued by the appellant as Ex.P.4, acknowledgment as Ex.P.5, returned cover as Ex.P.6 and the postal receipt as Ex.P.7, Pronote as Ex.P.8 and the statement of account of the accused as Ex.P.9.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same however, he did not examine any witness nor mark any documents.

5. Considering the above materials the trial Court acquitted the respondent/accused on the ground that the appellant failed to prove the liability and he has also not proved that the cheque has been issued by the respondent. Now, challenging the above said order of acquittal, the present revision has been filed.

6. Earlier when the matter was taken up for hearing the learned counsel appearing for the petitioner filed a memo withdrawing his appearance. In the above circumstances, Ms. N.Premalatha, is appointed as legal aid counsel for the appellant.

7. I have heard Ms.N.Premalatha, learned counsel appearing for the appellant. Even though notice was served on the respondent and the name of the respondent was also printed in the cause list, none appeared for the respondent.

8. It is the specific case of the appellant/complainant that the respondents borrowed a sum of Rs.2 lakhs and in order to discharge part of the liability, they have issued a cheque for a sum of Rs.1,60,000/-, which was returned on the ground of insufficient funds. But, P.W.1, in his cross examination, has admitted that he did not advance any loan to the respondents. But all the transactions were done by one Chodia and the disputed pronote was obtained from his friend Chodia, and the appellant is also not aware that the pronote issued to him and he has not seen the accused while signing the pronote. Apart from that the appellant also contended that at the time of borrowal, the respondent issued 10 cheques for Rs.20,000/- each. Out of which, two cheques had been honoured for Rs.40,000/- and for remaining sum of Rs.1,60,000/-, the present cheque has been given. But, it is not stated so in the complaint and the said returned cheques were also not produced before the trial Court and the person said to have advanced the amount, Chodia was also not examined by the appellant. Considering all those

materials, the trial Court came to a conclusion that the appellant failed to prove the liability and acquitted the accused. I have also gone through the records and I find no illegality or irregularity in the judgment of the Court below. In the above circumstances, there is no merit in the appeal and it deserves to be dismissed.

9. In the result, the Criminal Appeal is dismissed and the impugned judgment passed by the Court below is hereby confirmed.

10. While parting with the case, I appreciate the services rendered by Ms.N.Premalatha, learned counsel who appeared on behalf of the appellant, as Legal Aid Counsel. The Legal Services Authority is directed to pay her remuneration.

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

mrp

To

- 1.The XVII Metropolitan Magistrate,
Saidapet, Chennai.
2. Do thro Chief metropolitan Magistrate,
Egmore, Chennai.
- 3.The Secretary,
The Legal service Authority,
High Court, Madras.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Premalatha, Advocate SR.No.87337

Cr1.A.No.1414 of 2002

SG(CO)
GN(04/06/2018)