IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.10.2017

Coram:

The Honourable Mr. Justice C.T. SELVAM

Criminal Appeal No.770 of 2006

Mr. S. Ramamoorthy ...Appellant

Verus

Mr. K. Ramasamy ...Respondent

This Criminal Appeal is filed under Section 378 of the Criminal Procedure Code praying to set aside the order of acquittal dated 28.04.2006 made in C.A.No.98/2005 on the Court of Additional District Sessions Judge/Fast Track Court, Vellore reversing the order dated 04.07.2004 made in C.C.No.223 of 2004 on the file of the Court of Judicial Magistrate No.II, Walajapet.

For Appellant : Mr. V. L. Akshay Sajin Kumar for Mr. N. S. Sivakumar

For Respondent : Mr. K. Ethirajalu, Legal Aid Counsel

J U D G M E N T

This appeal arises against the judgment passed in Crl.A.No.98 of 2005 on the file of learned Additional District Sessions Judge/Fast Track Court, Vellore dated 28.04.2006, reversing the judgment passed in C.C.No.223 of 2004 on the file of learned Judicial Magistrate No.II, Walajapet dated 04.07.2004 convicting the accused for offence u/s. 138 of the Negotiable Instruments Act and sentencing him to undergo 6 months S.I and to pay a sum of Rs.2,25,000/- as compensation to complainant.

2. Appellant/complainant moved prosecution informing that respondent obtained a loan of Rs.2,25,000/- from the complainant and towards repayment of borrowing, accused gave him a cheque bearing No.358499 dated 10.04.2004, drawn on State Bank of

India, Ranipet, which upon presentation was returned unpaid for the reason “Account Closed”. The complainant caused statutory notice. A complaint has been preferred alleging offence u/s. 138 of the Negotiable Instruments Act.

3. Before trial Court, appellant/complainant examined himself as sole witness and marked 7 exhibits. On the defence side, one witness was examined and 4 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 04.07.2004, convicted accused u/s.138 of the Negotiable Instruments Act and sentenced him to 6 months S.I and to pay a sum of Rs.2,25,000/- as compensation to the complainant u/s.357 (3) Cr.P.C. There against, accused preferred Crl.A.No.98 of 2005 on the file of learned Additional District and Sessions Judge, Vellore, which was allowed and the accused was acquitted under judgment dated 28.04.2006. There against, the complainant filed this Appeal.

4. Heard learned counsel for appellant and learned counsel for respondent.

5. While we are able to appreciate the contention of learned counsel for appellant that Court below has erred in holding that the appellant failed to array the Namakkal Transport Corporation as an accused, while arraying the respondent as the accused in the case, since, through the evidence, it is seen that the Namakkal Transport Corporation is a proprietary concern of the respondent. We are unable to accept other contentions of learned counsel for the appellant, since in rendering a finding of acquittal in C.A.No.98 of 2005 as against the finding of conviction for offence u/s.138 of the Negotiable Instruments Act arrived at by Trial Court, the Appellate Court has reasoned as follows:

(i) While in the complaint, appellant/complainant has informed that accused used to get monies from him frequently and Ex.P1, cheque, has been issued towards repayment of Rs.2,25,000/-, in his deposition, he has deposed that respondent/accused borrowed a sum of Rs.2,25,000/- on 10.04.2004, undertook to repay the same within 5 days and issued Ex.P1, cheque dated 10.04.2004. If respondent/accused undertook to repay within 5 days, then he would not have given cheque on the date of borrowing itself.

(ii) It was the case of appellant/complainant that respondent/accused has earlier borrowed a sum of Rs.2,25,000/- from him and defaulted in repayment and he has preferred a complaint against him. While so, the contention of appellant/complainant that he has given a sum of Rs.2,25,000/- to respondent/accused without obtaining any document was unbelievable.

(iii) PW-1/complainant, in cross, has admitted that the details in the cheque and signature thereon were of different ink. Hence, it was clear that PW-1/complainant has misused the cheque issued by respondent/accused.

(iv) Respondent/accused has established his case through Exs.D1, D2 and D3, receipts. PW-1, in cross, has admitted that Exs.D1 to D3 were issued by his wife for payment of interest by respondent/accused and as such, it was clear that accused used to borrow monies from PW-1/complainant and the cheque issued towards security has been misused by PW-1/complainant.

(v) In Ex.P6, reply notice, respondent/accused has informed that a sum of Rs.1,30,000/- has to be repaid to PW-1/complainant. Ex.P7, Insolvency petition filed before Sub Court, Namakkal, by respondent/accused, in which a series names of debtors have mentioned and PW-1/complainant has been shown as 20th debtor and a sum of Rs.1,30,000/- was due to him under Ex.P1, cheque, marked in this case.

6. This Court finds totally acceptable and is fully satisfied with the judgment of acquittal, dated 28.04.2006 made in C.A.No.98 of 2005 on the file of Additional District Sessions Judge/Fast Track Court, Vellore.

7. Hence, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Vellore.

2.The Judicial Magistrate No.II,
Walajapet.

3.The Section officer,
Criminal Section, High Court, Madras.

Criminal Appeal No.770 of 2006

GMR(CO)
GSP(03/10/2018)