

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.189 of 2014

Suresh ...Appellant/Complainant
Vs.
Kalathi ... Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Code of Criminal Procedure, to set aside the Judgment dated 31.10.2012 passed in C.A.No.48/2012 on the file of the learned I Additional Sessions Court, Thiruvallur, reversing the order of conviction dated 16.06.2012 passed in C.C.No.116 of 2012 on the file of the learned Fast Track Court, Magisterial Level, Thiruvallur.

For Appellant : Mr.R.Krishnaswamy
For Respondent : Mr.G.Saravanan

ORDER

The case of the appellant is that the respondent borrowed a sum of Rs.90,00,000/- from the appellant and issued two cheques dated 30.01.2008. The cheques which were presented on 30.01.2008 were returned with an endorsement "No such Account." Thereafter, the appellant issued a statutory notice to the respondent through his advocate on 18.02.2008. The respondent also sent a reply notice on 06.03.2008 with false contents. The respondents also failed to repay the amount within a period of 15 days from the date of receipt of the above notice. Therefore, the appellant made a complaint against the respondent before the Judicial Magistrate Court, Fast Track Court at Thiruvallur. The learned Magistrate, after completing the trial, found that the respondent was guilty under Section 138 of the Negotiable Instruments Act. Therefore, he was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for two years and to pay a compensation under Section 357(3) Criminal Procedure Code for Rs.92,70,000/-.

2. Aggrieved against the judgment of the learned Magistrate, the respondent herein filed C.A.No.48 of 2012 on the file of the I Additional Sessions Court, Thiruvallur. The I Additional Sessions Judge, Thiruvallur, after hearing, both sides found that the learned Magistrate has committed an error

in finding that the respondent was guilty and therefore, the learned Sessions Judge was set aside the judgment of the learned Magistrate and allowed the appeal.

3. Against the judgment of the I Additional District and Sessions Judge, Thiruvallur, the complainant filed the present appeal against the judgment of acquittal.

4. Heard, both sides.

5. The learned counsel for the appellant would submit that the respondent borrowed a sum of Rs.90,00,000/- on 25.07.2005 and issued two cheques dated 30.01.2008. Hence, he did not repay the amount as promised by him, the appellant filed the complaint before the learned Fast Track Court, Magistrate Level, Thiruvallur and the learned Magistrate Court has rightly convicted the respondent herein and thereafter, the respondent filed an appeal before the first Appellate Court. But the Sessions Court failed to consider, the case of the appellant and the order passed by the trial Court was set aside and the learned I Additional District and Sessions Judge, allowed the appeal filed by the accused. The first Appellate Court failed to consider the fact that the cheques issued by the respondent were proved.

6. The learned counsel for the respondent would submit that the brother of the appellant was working under the respondent Company. Therefore, he had issued the cheques for clearing the amount, for purchasing petrol and diesel. He failed to pay his dealer therefore, the respondent made a complaint before the C.B.C.I.D Police against his brother and the case was pending. He misused the cheques issued by the respondent and utilized the cheques through appellant herein. According to the learned counsel for the respondent, when the earlier cheques had been returned, knowing fully well that the earlier cheques already been returned, no prudent man lend a huge amount of Rs.90,00,000/- Therefore, that itself he has concocted the cheques issued to his brother for settling the dealers of the respondent.

7. It is the case of the appellant that the respondent borrowed a sum of Rs.90,00,000/- dated 30.01.2008 issued two cheques for a sum of Rs.45,00,000/- each bearing number 421694 and 421695 when presented, the cheques were returned "No such Account." Since the respondent has not paid the money within a period of 10 days from the date of receipt of notice, the appellant made a complaint before the Judicial Magistrate Court and was convicted under Section 138 of the Negotiable Instruments Act, whereas, the defence taken by the respondent also was running a petrol bunk, in which, the brother of the

appellant was working as a manager is that at that time, the respondent gave cheque leaves to his brother for clearing the dealers, who supply petrol and diesel to him. Since the brother of the appellant misused the cheques for which, the respondent also gave a complaint against brother of the appellant and the case was pending and at that time, the cheques have been misused by the brother of the appellant.

8. Further, the respondent has challenged the capacity of the appellant to lend huge amount of Rs.90,00,000/- The appellant is admittedly working in a private concern for salary and the respondent is running a petrol bunk. Further, the appellant is not an Income Tax assessee and once the respondent disputed the capacity of the appellant to lend the money, it is the duty of the appellant to prove his case. When earlier cheques were also returned as "Account closed" and even subsequently presented cheques were returned for the same reason "No such Account", the appellant has not chosen to examine the bankers of the respondent, when the account of the respondent was closed.

9. Further, as contended by the learned counsel for the respondent, when the earlier cheques were returned and Ex.D1 notice was also issued by the complainant, subsequently, no prudent man would give a loan of Rs.90,00,000/- to the respondent. Though the complainant has filed the receipts to show that the respondent received the money whereas the appellant, has not stated anything about the receipts either in the statutory notice issued by the appellant or in the complaint. He has not even annexed as a list of documents and also proceedings and has not clearly denied that the signature even in that receipt is not true. This shows that the appellant has not proved his case stated by him. Therefore, the First Appellate Court re-appreciated the entire facts and found that the appellant has not proved his case beyond reasonable doubt against the respondent and therefore, set aside the judgment of conviction passed by the learned Magistrate and allowed the appeal. So, in this case before this Court, the appellant has not established that the judgment of the first Appellate Court is erroneous and therefore, in the facts and circumstances, this Court finds that there is no merit in the appeal.

10.Hence, this Criminal Appeal is dismissed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

To

1. The I Additional Sessions Judge
Thiruvallur.

2.The Judge
The Fast Track Court,
Magisterial Level,
Thiruvallur.

3.The Public Prosecutor,
High Court, Madras.

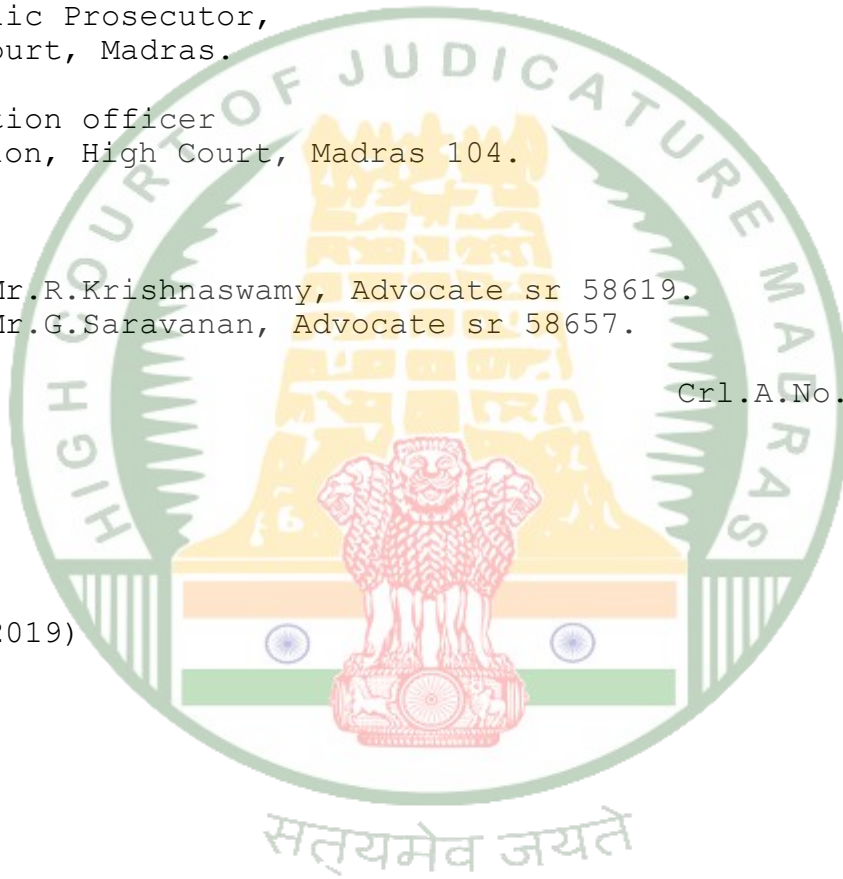
4.The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.R.Krishnaswamy, Advocate sr 58619.

+1 CC to Mr.G.Saravanan, Advocate sr 58657.

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KK(CO)
SP(23/07/2019)



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