

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.03.2018
DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.240 of 2008

S.Govindarajulu ... Appellant/Complainant

Vs

Anbarasan ... Respondent/Accused

Appeal filed under Section 378 of the Code of Criminal Procedure, against the order of the Acquittal passed by the learned II Metropolitan Magistrate, Egmore, Chennai - 600 008 in C.C.No.7273 of 2005 dated 15.02.2008 acquitting the accused for the offence under Section 138 of Negotiable Instruments Act.

For Appellant : Mr.T.R.Ravi
For Respondent : Mr.S.T.Natramil Kaviarasu
Legal Aid Counsel

JUDGMENT

The Appellant abovenamed begs to prefer this Memorandum of Grounds of Criminal Appeal against the order of the Acquittal passed by the Learned II Metropolitan Magistrate, Egmore, Chennai-600 008 in C.C.No.7273 of 2005 dated 15.2.2008 acquitting the accused for the offence under section 138 of Negotiable Instrument Act.

2.The Appellant filed this Criminal Appeal against the Judgment and order of acquittal of the Respondent/Accused passed in C.C.No.7273 of 2005 dated 15.2.2008 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai-600 008 for the offence under section 138 of the Negotiable Instruments Act.

3.The case of the Appellant /Complainant is that the Appellant/Petitioner Govindarajulu in his sworn statement alleged that the Respondent/Accused joined in the two chits conducted by him for Rs.50,000/- and not regularly paying the monthly instalments. To overcome this, the Accused borrowed a

sum of Rs.1,00,000/- on 17.02.2003 for his debt agreeing to repay the same within two months and issued a postdated cheque dated 17.04.2003. After the period of two months, the Appellant/Complainant presented the said cheque for encashment through his branch Andra Bank, Shenoybagsar Branch, Chennai, on account of "Insufficient Fund", the cheque was returned on 19.04.2003. On 05.05.2003, the Appellant issued a Mandatory legal notice to the Respondent/Accused. On receiving the notice, the Respondent issued his reply on 19.05.2003 and counter reply notice was also given by this Appellant on 25.05.2003. Hence the Appellant filed a complaint u/s 138 of the Negotiable Instruments Act. On receipt of summons, the Respondent/Accused appeared and denied the acquisition against him.

4.To prove the case, the Appellant/Complainant examined himself as PW 1 . No evidence was adduced on the side of Accused.

5.After appreciating the evidence of the appellant, both oral documentary, the Learned Trial Court held that the Accused found not guilty and acquitted him. Aggrieved over the same, the Appellant preferred the present appeal.

6.The contentions in grounds of appeal as well as the submissions of the Learned Counsel appearing for the appellant are that the ingredients of the offence under section 138 of Negotiable Instruments Act is made-out and the Respondent issued the disputed cheque towards legally enforceable liability, the Trial Court erroneously come to the conclusion that the Appellant has not proved whether the cheque was issued to discharge the hand loan or issued as a security for the chit amount and impugned cheque's signature is in one ink and other written things were in different ink, the cheque cannot be doubted, while the accused admits his liability and signature.

7.Per contra, the Learned Counsel for the Respondent/Accused contended that the Trial Court after analyzing the evidence of the appellant, arrived at a conclusion that the cheque was not issued for the repayment of the loan amount alleged to have been received by the Respondent/Accused. The Respondent issued an unfilled cheque infavour of the appellant for security in the chit collection and the same was misused for filing the Complaint. The signatures and the hand writings were on different inks. Therefore, there was no truth that the appellant had advanced a sum of Rs.1,00,000/- to the respondent and prayed for dismissal of the appeal.

8.I heard Mr.T.R.Ravi, learned counsel for the appellant and Mr.S.T.Natramil Kaviarasu, learned Legal Aid Counsel for the respondent and perused the entire materials available on record.

9.The point that arises for my consideration is:

a) Whether the Trial Court was justified in granting an order of acquittal of respondent for the charge under Section 138 of N.I. Act?

10.In the case on hand, Respondent/Accused contended that he issued a cheque for security in the chit collection and the same was misused by the Appellant. The Appellant was cross examined by the Respondent regarding the loan transaction as alleged in the complaint. In the cross examinations the appellant specifically admitted the chit business conducted by him and the Respondent joined in the two chits for Rs.20,000/- . But in the legal notice, the appellant alleged that respondent was not paying the monthly installments in the two fifty thousand chits and due was pending against him. The appellant further deposed that due to the shortage of ink, the Respondent used two different pens in filling the cheque. But in the cheque in question, the signature and words were written in two different inks and the reason adduced by the appellant cannot be accepted. In further cross examination, the appellant deposed that he has not filed any documents pertaining to the chit business between the appellant and the respondent. The respondent extensively cross-examined the appellant and elucidated favourable points from the evidence which fundamentally affect the substratum of the Complaint. Ordinarily in a criminal case, the onus is on the Appellant/Complainant to establish his case against the Respondent/Accused beyond all shadow of doubt. In fact an Accused can maintain silence. Furthermore, he need not enter into the witness box for the purpose of adducing evidence. Per contra, he can collect gather favourable points from the evidence of the complainant and can make endeavour before the trail court to shake the case of the Appellant. Therefore, on proper analysis of the oral and documentary evidence, the learned trial Court came to the conclusion that the complainant had failed to prove the case.

11.For all the above, the Learned Trial Court had rightly arrived at the conclusion and thus for this Court with reference to the settled propositions in the factual matrix there is nothing to interfere with the Trial Court's acquittal judgment, but for dismissal of the appeal by confirming it.

12.In the result, the Criminal Appeal is dismissed confirming the order of acquittal recorded by the trial Court in its judgment supported by reasons in its not finding the accused guilty for the offence under Section 138 of the Negotiable Instruments Act.

13.The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.5,000/- to Mr.S.T.Natramil Kaviarasu, Legal Aid Advocate.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vs

To

1. The II Metropolitan Magistrate,
Egmore, Chennai - 600 008.

2. The Secretary
Legal Aid Service Authority
High Court, Madras 104.

+1 CC to Mr.T.R.Ravi, Advocate sr 78755.

Criminal Appeal No. 240 of 2008

RK(CO)
SP(07/12/2018)

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