

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.57 of 2009

P.Ramachandran

.. Appellant/Complainant

Vs.

M.G.Mahendran

.. Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure to set aside the order of acquittal dated 23.09.2008 passed by the XIV Metropolitan Magistrate, Egmore in C.C.No.19262 of 2005 and allow the Criminal Appeal.

For Appellant : Mr.R.Babu
For Respondent :No Appearance

JUDGMENT

For the sake of convenience, the parties will be referred to as complainant and accused.

2.The complainant has filed a complaint under Section 200 Cr.P.C. against the accused for the alleged commission of offence under Section 138 N.I.Act. It is his allegation in the complaint that the accused borrowed a sum of Rs.1,00,000/- from the complainant on 25.04.2004 on the basis of pronote executed by the accused along with his wife to repay the same without any interest on or before 20.01.2005, the accused failed to repay the same and after several requests the accused issued a cheque bearing No.682189 dated 21.02.2005 drawn on State Bank of India, Thousand Lights branch, Chennai for a sum of Rs.72,000/- in favour of the complainant towards discharge of the liability in respect of the aforesaid loan. When, the said cheque was presented for collection on 05.07.2005 in his account No.10568 in the same bank, and the same was returned as funds insufficient. The complainant has issued legal notice on 11.07.2005 and the same was received by the accused on

13.07.2005. The accused had issued a reply on 25.07.2018 containing false averments but the Accused failed to repay the cheque amount. Hence, the accused has committed an offence punishable under Section 138 N.I.Act, Hence, he may be punished for commission of the offence and compensation may be awarded u/s.357 Cr.P.C.

3.The Accused was examined under Section 313(1)(b) Cr.P.C. with regard to incriminating evidence against him, the accused denied the charges and the trial was conducted. After the trial, the accused was acquitted under Section 255(1) Cr.P.C. Aggrieved by the same, the present appeal has been filed by the complainant.

4.The learned counsel for the petitioner would submit that there were several transactions took place in between the accused and the complainant and the accused has paid the amount of Rs.73,000/- for one of such transactions on the said date but the cheque was issued for another transaction. The Trial Court without considering the same, has acquitted the accused.

5.Though, notice was served to the accused, no one represented on behalf of the accused. Hence, this Court inclined to decide the case on merits considering the period of long pendency of the case.

6.On a perusal of the records, it discloses that the accused borrowed a sum of Rs.1,00,000/- from the complainant on 25.04.2004 on the basis of pronote executed by the accused to repay the same without any interest on or before 20.01.2005. The accused after several requests, issued a cheque bearing No.682189 dated 21.02.2005 drawn on State Bank of India, Thousand Lights branch, Chennai for a sum of Rs.72,000/- in favour of the complainant towards discharge of the liability in respect of the aforesaid loan. When, the said cheque was presented for collection on 05.07.2005 in his account No.10568 in the same bank, and the same was returned as funds insufficient.

7.PW1 in his statement has agreed the said deposit Rs.73,000/- on 21.02.2005 and the cheque date was also on 21.02.2005. However, in his cross examination he has stated that there were several transactions in between the accused and the complainant other than the pronote dated 25.04.2004. The complainant has not established his case that there were several transactions in between them other than the pronote executed by the accused on 25.04.2004. In the absence of any materials, it is the primary duty of the complainant to prove that there are several transactions took place between them. The complainant has failed to prove that the cheque was issued for some other

transaction. The accused has rebutted the presumption raised in favour of the complainant and the burden now shifted to the complainant to prove that the amount received was towards other transaction.

8.The complainant could produce only the pronote dated 25.04.2004 and no other materials are available with him to arrive at a conclusion in favor of the complainant. The accused has produced counter foil under Ex.D4 to show that he has deposited the amount of Rs.73,000/-for the said cheque on the date of cheque. Accordingly, the Trial court has drawn a presumption that there is no liability on the date of cheque and further immediately after receipt of legal notice the accused has issued reply setting out the fact that he has paid the amount of Rs.73,000/- towards the cheque issued under Ex.P2. Hence, the cheque which has been issued does not have any existing liability on the date of presentation of the cheque merit acceptance. Hence, this Court does not find any error or infirmity in the order passed by the Trial Court.

9.Accordingly, this Appeal stands dismissed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The XIV Metropolitan Magistrate,
Egmore Chennai-8

2.-do-thro' The Chief Metropolitan Magistrate,
Egmore Chennai

Cr1.A.No.57 of 2009

VGII (CO)
GSP (13/12/2018)

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