

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.02.2018

DELIVERED ON : 31.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.35 of 2006

T.Kasirajan

... Appellant

Vs

G.Mohan

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the Judgment of acquittal, dated 30.06.2005 in C.C.No.646 of 2003 on the file of the learned Judicial Magistrate-V, Salem.

For Appellant : Mr.P.Mathivanan

For Respondent : Mr.P.Jagadeesan

JUDGMENT

This Criminal Appeal is preferred by the appellant/complainant against the judgment of acquittal orders passed by the Learned Judicial Magistrate No.V, Salem in C.C.No.646 of 2003 dated 30.06.2005.

2.Brief case of the appellant/complainant is that:

The case of the appellant/complainant is that the respondent borrowed sum of Rs.70,000/- on 29.6.2003 and issued post-dated cheques bearing Nos.514773 for Rs.40,000/- dated 29.06.2003 and bearing No.514774 for Rs.30,000/- dated 27.06.2003 respectively drawn on Indian Bank Fort Branch. The appellant deposited the said cheques for collection in his Co-operative bank Ammapettai branch, Salem on 01.07.2003, but the same was dishonoured and returned with return memo noted with "insufficient funds". The appellant/complainant issued statutory legal notice to the respondent/accused on 12.07.2003 and the same was received by the respondent issued the reply notice with false averments and failed to repay the loan amount. Hence, the appellant filed complaint.

3. During the trial, the appellant himself examined as PWs1 to PW5 and Exhibits-P1 to P7 were marked. The respondent examined himself as DW2 and Exhibits DW1 and DW2 were marked.

4. On completion of the trial, the learned trial judge acquitted the respondent/accused under section 138 of the Negotiable Instrument Act. Aggrieved over the acquittal, the appellant/complainant filed this criminal appeal.

5. The learned counsel for the appellant/complainant submits the Court below ought to have eschewed the evidence of DW1 to DW4 on the ground that they themselves admitted in the course of cross examination that they have not known personally for what purpose the complaint has filed by the complainant/appellant herein.

6. The learned counsel for the appellant/complainant submits the Court below has miserably failed to consider that the accused in his evidence clearly admitted that he has not given any complaint against the complainant before police station stating that he has not paid chit amount, further he himself admitted that in Exs.P1 and P2 cheques where the signature is belongs to him.

7. The learned counsel for the appellant/complainant submits that the Court below failed to note that though the accused has taken defence that he has issued two unfilled cheques to the complainant/appellant. However in his evidence he has not stated that he has given two unfilled cheques to the complainant.

8. The learned counsel for the appellant/complainant submits that the Court below is not correct and proper in holding that as per evidence of PW1 he has given money to accused in the second week of May. The above finding is perverse and the same is against the evidence of PW1. PW 1 has not produced the income tax account.

9. The learned counsel for the appellant/complainant submits that the Court has miserably failed to note that the complainant has paid the chit money to the accused, even as per the Exs.D1 and D2 the chit money has paid. In such circumstances there is no necessity for the complainant to produce the accounts in respect of the above chit transactions.

10.The learned counsel for the respondent supported the findings of the learned trial Court and prayed for dismissal of the criminal appeal.

11.I heard Mr.P.Mathivanan, learned counsel for the appellant and Mr.P.Jagadeesan, learned counsel for the respondent. I carefully appreciated the evidence adduced on both sides.

12.The evidence of PW1 differs in material particulars regarding the alleged transaction of money loan to the respondent/accused. Further there were certain amount of chit transactions between the appellant and respondent and the same was proved by the respondent/accused by examining the witnesses DWs 1 to 4. The Exhibits-D1 and D2, the chit receipt issued by the Pillaiyar finance and chit funds dislodge the case of the appellant. The learned trial Court rightly disbelieved the evidence adduced by the appellant and dismissed the complaint holding that the appellant failed to establish the ingredients of section 139 of the Negotiable Instruments Act.

13.In the result, this Criminal Appeal is dismissed, by confirming the order passed in C.C.No.646 of 2003 dated 30.06.2005, on the file of the learned Judicial Magistrate No.V, Salem.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vs
To

1. The Judicial Magistrate-V, Salem.
2. The Section Officer, Criminal Section,
High Court, Madras -104.

+1cc to Mr.P.Jagadeesan, Advocate SR.No.75167

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NRL (CO)
GMY (27/02/2019)