

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.584 of 2014

R.Gomathi

...Appellant/Complainant

Vs.

KVJ Mohan @ V.Chandramohan

...Respondent/Accused

This Criminal Appeal filed under Section 378 Code of Criminal Procedure against the order of acquittal dated 01.04.2014 made in C.A.No.85 of 2013 on the file of the Principal Sessions Court, Tiruppur, reversal of the conviction imposed in the judgment dated 07.10.2013 made in C.C.No.127 of 2008 on the file of the Judicial Magistrate, Kangayam.

For Appellant : Mr.N.Manokaran

For Respondent: Mr.S.Paneerselvam

JUDGMENT

This criminal appeal has been filed against the order of acquittal dated 01.04.2014 made in C.A.No.85 of 2013 by the learned Principal Sessions Judge, Tiruppur, reversal of the conviction imposed in the judgment dated 07.10.2013 made in C.C.No.127 of 2008 by the learned Judicial Magistrate, Kangayam.

2 Complainant is appellant in the present criminal appeal. The case of the appellant is that the respondent had borrowed a sum of Rs.6,00,000/- on 03.12.2007 for his urgent business needs and on the same day, the respondent issued a post dated cheque for Rs.6,00,000/- bearing No.011416 dated 03.01.2008 drawn on ICICI Bank in favour of the appellant. When the said cheque was presented for collection on 05.01.2008, it was returned on 21.01.2008 as "account closed". Subsequently, the appellant issued a legal notice on 01.02.2008 and the same was received by the respondent on 06.02.2008. The respondent neither repaid the amount nor given any reply to the said notice. Therefore, the appellant had filed a private complaint under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Kangayam, which was taken on file in C.C.No.127 of 2008.

3 The respondent denied the allegations made against him by stating that he had not issued any cheque to the appellant and had not borrowed any loan from her as stated in the complaint. Further the respondent stated that he did not receive any statutory notice said to have been sent by the appellant and the appellant did not produce any proof for service of notice. Hence the respondent prayed for rejection of the complaint preferred by the appellant.

4 Before the trial Court, the appellant examined herself as P.W.1 and marked documents Ex.P1 to P9. The respondent examined himself as D.W.2 and two other witnesses as D.W.1 & D.W.3 and Ex.D1 was marked.

5 After trial and evidence, the trial court found the respondent guilty of offence under Section 138 of Negotiable Instruments Act, 1881, has convicted the respondent by judgment dated 07.10.2013 and sentenced to undergo 1 year imprisonment and no fine was imposed. Aggrieved against which, the respondent preferred an appeal before the learned Principal Sessions Judge, Tiruppur, in C.A.No.85 of 2013. The lower appellate Court, after hearing both sides, being a fact finding Court, re-appreciated entire evidences and materials, allowed the appeal by judgment dated 01.04.2014, wherein, the judgement of the trial Court dated 07.10.2013 was reversed and acquitted the respondent.

6 Aggrieved against the said judgment dated 01.04.2014 made in C.A.No.85 of 2013, the complainant has come forward with the present criminal appeal.

7 The learned counsel for the appellant/complainant would submit that the respondent had not denied the signature found in the cheque and he admitted issuance of cheque, but not to the appellant to some one. Though the appellant could not produce postal acknowledgment card for service of legal notice, she has produced a letter from the postal department to prove the same. Once notice sent to correct address, legal presumption under Section 114(g) of the Evidence Act would be applied. The trial Court has rightly observed that when the respondent admitted the signature, he has to prove the fact, how the cheque had been in the hands of the appellant and the respondent did not produce any document to rebut the legal presumption under Section 114(g) of the Evidence Act, in favour of the appellant/complainant, in the absence of any proof for the above, the denial of the respondent cannot be accepted. The learned counsel in support of his contentions, has relied on decision of the Hon'ble Supreme Court reported in 2007 (2)MW (cr.) DCC 100 (SC). The lower appellate Court failed to consider the above facts and acquitted the respondent by observing that the complainant had not proved her case beyond the reasonable doubts.

8 The learned counsel for the respondent/accused would submit that the appellant/complainant failed to explain the fact as to why she did not examine any one from the postal department to corroborate her version that legal notice has been served on the respondent. Further the respondent has produced Ex.D1 statement of bank account of the appellant, wherein it was clearly mentioned that the appellant had borrowed a sum of Rs.4,99,151.50/- as agricultural loan and thus the appellant has also failed to prove her lending capacity. The lower appellate Court had elaborately gone into these facts and rightly acquitted the respondent, which does not warrant any interference of this Court.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 On a perusal of the records it reveal that the appellant lent a sum of Rs.6,00,000/- to the respondent for his urgent business needs. Since the cheque given by the respondent was returned as "account closed", the appellant sent a legal notice on 01.02.2008. As there is no reply for the said notice from the respondent, the appellant had filed a private complaint before the learned Magistrate and the learned Magistrate after elaborate trial, convicted the respondent, against which the respondent preferred appeal. The lower appellate Court after re-appreciating entire evidences, reversed the judgment of the trial Court dated 07.10.2013 and acquitted the respondent by judgment dated 01.04.2014.

11 The main contention of the appellant is that she sent the legal notice to correct address of the respondent and she obtained a letter from the postal department, which shows that the notice has been served on the respondent. But, the appellant did not choose to examine any one from the postal department to corroborate her version. The lower appellate Court, in the absence of proof of the above, has rightly acquitted the respondent, which does not warrants any interference of this Court. It is well settled legal proposition of law that cause of action for the offence under Section 138 of Negotiable Instruments Act, will be taken into account from the date on which, the statutory notice has been served on the respondent. In the present case on hand, the appellant/complainant did not prove that the statutory notice has been served on the respondent. Mere production of letter from the postal department would not suffice to prove the fact that statutory notice has been served on the respondent, without examining any one from the postal department as witness. The decision referred to by the learned counsel for the appellant/complainant will not be applicable to the present case on hand, since in that case notice has been returned, whereas in

the present case notice has not been returned.

12 This Court is of the view that the appellant failed to prove the fact that statutory notice has been served on the respondent and failed to prove that there is a legally enforceable debt. Hence this Court does not find any illegality or infirmity in the judgment dated 01.04.2014 made by the lower appellate Court.

13 In the result, the criminal appeal is dismissed and judgment dated 01.04.2014 made by the lower appellate Court is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Tiruppur.
2. The Judicial Magistrate, Kangayam.
3. The Chief Judicial Magistrate,
Tiruppur (for information)

Copy To

The Assistant Registrar,
Tamilnadu Mediation and Conciliation centre,
High Court, Madras.

+lcc to Mr.N.Manokaran, Advocate, S.R.No. 57026

+lcc to Mr.S.Panneer Selvam, Advocate, S.R.No. 56795

Cr1.A.No.584 of 2014

AD(CO)
GN(16/11/2018)