

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.647 of 2014

P. Manikandan

...Appellant

Vs.

G. Sudha

...Respondent

This Criminal Appeal filed under Section 378 Code of Criminal Procedure against the Order of acquittal dated 30.07.2014 made in C.A.No.3 of 2014 on the file of the learned II Additional District Sessions Judge, Erode, reversing the Order dated 25.11.2013 made in S.T.C.No. 159 of 2012 on the file of the learned Judicial Magistrate, Fast Track No.1, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.K.Thirukumaran
Legal Aid Counsel

JUDGMENT

The allegation of the appellant is that the respondent borrowed a sum of Rs.2,00,000/- on 15.10.2011 to meet her urgent family expenses and when the cheque bearing No.439340 issued by the respondent dated 01.02.2012, drawn on the Dhanalakshmi Bank Limited, Erode, was presented, the cheque returned as "opening balance insufficient" on 03.02.2012.

2 Subsequently, the complainant issued a legal notice on 06.02.2012 to the accused and the accused received the same on 11.02.2012. However, she did not repay the amount borrowed; but sent a reply communication to the complainant, denying the allegations made in the notice dated 06.02.2012. Therefore, the complainant filed a private complaint u/s.138 of the Negotiable Instruments Act, 1881, before the learned Judicial Magistrate, Fast Track Court, (Magistrate Level I), Erode, and the Magistrate taken the complaint on file in S.T.C. No.159/2012.

3 Before the trial Court, the complainant examined himself as P.W.1 and marked Ex.P1 to P7. On the side of the respondent, D.W.1 has been examined and no document was marked.

4 The learned Magistrate, after trial, found that the accused guilty of offence under Section 138 of Negotiable Instruments Act and convicted the accused under Section 255(2) of Cr.P.C., and sentenced him to undergo Simple Imprisonment for a period of six months with fine of Rs.5,000/-, in default, to undergo simple imprisonment for further period of 30 days, by judgment dated 25.11.2013. Aggrieved against which, the accused had preferred an appeal in C.A.No.3 of 2014 before the learned II Additional District and Sessions Judge, Erode. The lower appellate Court after giving all the opportunities to both the parties, had reversed the judgment of the trial Court dated 25.11.2013 and acquitted the accused by judgment dated 30.07.2014.

5 Aggrieved against the order of acquittal dated 30.07.2014, the complainant has now before this Court with the present criminal appeal.

6 The learned counsel for the appellant/complainant would submit that the respondent/accused did not deny issuance of the cheque and signature. It is for the respondent/accused to prove the fact how the cheque had been gone into the hands of the appellant/complainant. Once issuance of cheque and signature are admitted by the accused then burden of proof shifted on the accused to establish his defence. The trial Court has rightly convicted the respondent/accused, whereas, the lower appellate Court had failed to consider the above facts and acquitted the respondent/accused, which warrants interference of this Court.

7 The learned counsel appearing for the respondent/accused would submit that there was money transaction between the husband of the respondent/accused and father-in-law of the appellant/complainant. Due to dispute arose between them the appellant intimidated the respondent/accused and the respondent issued a notice dated 20.01.2012 which was marked as Ex.A7 i.e. much prior to filing of the above complaint by the appellant. But the appellant did not send any reply and the same was not disclosed by the appellant either in his complaint or in his evidence before the trial Court. The lower appellate Court has rightly appreciated Ex.A7 and acquitted the respondent/accused, which does not warrants any interference of this Court.

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

9 On perusing the records, it reveals that the respondent/accused had sent notice Ex.A7, even much prior to filing of complaint by the appellant/accused, for which the appellant/complainant did not send any reply. Further the

appellant/complainant had not whispered anything about the Ex.A7 notice, either in his complaint or in his evidence. Hence the appellant/ complainant had not proved his case beyond reasonable doubts. There is suppression of material facts and the appellant has not come to the Court with clean hands. In the absence of any explanation as to why the appellant/complainant did not disclose anything about Ex.A7 notice, this Court is not inclined to set aside the judgment of acquittal passed by the lower appellate Court and there is no merit in this appeal.

10 In the result, the criminal appeal stands dismissed and judgment of acquittal passed by the lower appellate Court is hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The IInd Additional District Sessions Judge,
Erode.
2. The Judicial Magistrate, Fast Track No.1,
Erode.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.Guruprasad, Advocate sr.no.57081

+lcc to Mr.K.Thirukumaran, Advocate sr.no.56305

Cr1.A.No.647 of 2014

rsv(co)
nr 12/10/2018