

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2018

DELIVERED ON : 08.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Criminal Appeal No.643 of 2011

S.Gunasekaran

...Appellant

Vs

K.C.Shanmugasundaram

...Respondent

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, to set aside the order of the judgment in C.A.No.26 of 2010 on the file of the Fast Track Court No.IV, Bhavani and restore the order dated 29.12.2009 in C.C.No.24 of 2006 on the file of the Principal District Munsif, Bhavani, Erode District.

For Appellant : Mr.S.Kalyanaraman

For Respondent : Mr.N.Manokaran

JUDGMENT

This Criminal Appeal is directed as against the order of acquittal made in C.A.No.26 of 2010 dated 29.06.2011 on the file of the learned Additional District Session Judge, Fast Track Court No.IV, Bhavani, reversing the Judgment of conviction made in C.C.No.24 of 2006 dated 29.12.2009.

2.The case of the appellant/complainant is that the respondent herein borrowed a sum of Rs.1,00,000/- on 01.05.2002 to meet out his business expenses. To discharge the said loan amount, the accused issued a post dated cheque bearing No.831451 dated 06.01.2003 drawn on Canara Bank, AN Street, Madras. The said cheque was put for collection on 06.01.2003 by the complainant through his Banker namely Bhavani Koodal Co-operative Urban Bank Limited and the same was returned as unpaid on the ground that "Account closed" vide memo dated 28.02.2003. Thereafter statutory notice was issued to the accused on 17.03.2003. On receipt of the same the accused sent reply with false averments. As the accused has not repaid the loan amount, the complaint under Section 200 of Cr.P.C. was filed against the respondent herein to punish him for the offence under section 138 of N.I. Act.

3.Before the trial Court on behalf of the complainant 3 witnesses were examined as PW1 to PW3 including the complainant and Exs.P1 to P10 were marked. There is no oral or documentary evidence on the side of the accused.

4.Upon considering the oral and documentary evidence adduced on side of the appellant herein and upon hearing the arguments on either side, the trial Court found the accused guilty of the offence under section 138 of N.I. Act and convicted and sentenced the accused to undergo Simple Imprisonment for a period of six months and to pay fine of Rs.1000/-, in default to pay fine the accused shall undergo one moth R.I.

5.Challenging the said conviction and sentence imposed on the accused, he filed appeal before the learned Additional District and Sessions Court, Fast Track Court No.IV, Bhavani, Erode District in Criminal Appeal No.26 of 2010 dated 29.06.2011. The learned Appellate Judge after considering the case of the parties, was pleased to set aside the order of conviction and sentence imposed on the accused by judgment dated 29.06.2011, thereby acquitted the accused. This Appeal is directed as against the said order of acquittal.

6.I heard Mr.S.Kalyanaraman, learned counsel for the appellant and Mr.N.Manokaran, learned counsel for the respondent and the entire materials available on record are perused.

7.The learned counsel for the appellant/complainant argued that the lower appellate Court erred in holding that the complainant has not established the factum of closure of account of the accused with acceptable evidence, since the production of Ex.P7 shows that the account of the accused had a closing balance of Rs.830.12. According to the learned counsel for the appellant, the appellant was not given sufficient opportunity to let in rebuttal evidence. Hence the learned counsel would submit that the order of acquittal by the lower appellate Court is barred in law and the same is liable to be set aside by allowing this Criminal Appeal.

8.Per contra, the learned counsel for the respondent herein/accused has strenuously contented that in the case on hand the presumption available to the complainant under section 139 of N.I. Act has been rebutted by the accused. The lower Appellate Court by assailing proper reason, acquitted the accused which is not warranting interference by this Court.

9.This Court has gone through the entire records. The trial Court found that the presumption has to be drawn in favour of the complainant, since the accused has not rebutted the presumption by adducing oral and documentary evidences. I am concurring with the said finding of the trial Court, because despite opportunity was given to the accused, he has not proved that the signature found in Ex-P1 is not that of him.

10.The lower appellate Court reversed the Judgment of the trial Court mainly on the ground that there was a closing balance of Rs.830.12 and therefore held that account was not closed. But, I am of the considered view that at the time of closing the account of the accused, there was a balance amount of Rs.830.12 and the same has been mentioned in Ex.P7 and it does not mean that the account of the accused has not been closed. That apart with regard to the denial of signature of the accused is concerned; the initial burden to prove the same is causted upon the person who deny the document. In this case, the accused has denied his signature in Ex-P1 cheque, therefore the initial burden is on him to prove the same. But he has not taken any steps to prove the same either before the trial Court or lower appellate Court. Therefore, in my view the finding of the lower appellate Court is not justified one and the same cannot be accepted at all. In all probabilities, the Judgment of the trial Court is legally sustained and therefore, the order of acquittal made by the lower appellate Court is liable to be reversed.

11.In the result, this Criminal Appeal is allowed and the Judgment of acquittal made in C.A.No.26 of 2010 dated 29.06.2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.IV, Bhavani, is hereby set aside and the Judgment of conviction made in C.C.No.24 of 2006 dated 29.12.2009 on the file of the learned District Munsif-cum-Judicial Magistrate, Bhavani is uphold.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The District Munsif-cum-Judicial Magistrate,
Bhavani.

2.Do thro the Chief Judicial magistrate,
Bhavani, Erode District.

3.The Additional District and Sessions Judge,
Fast Track Court No.IV, Bhavani,

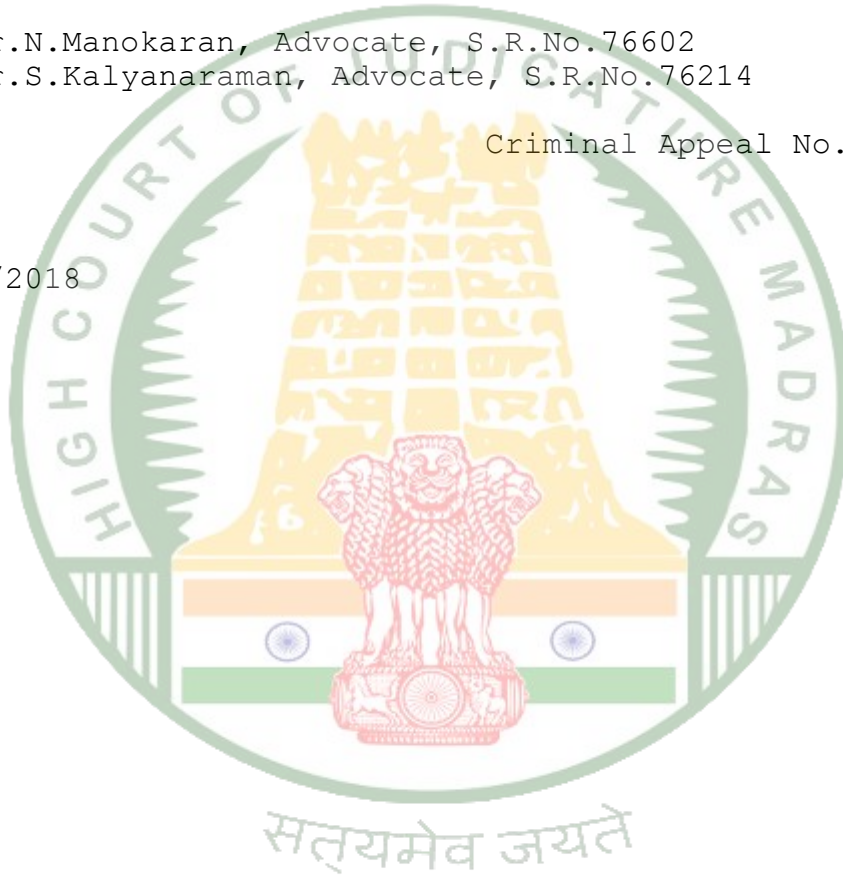
+lcc to Mr.N.Manokaran, Advocate, S.R.No.76602

+lcc to Mr.S.Kalyanaraman, Advocate, S.R.No.76214

Criminal Appeal No.643 of 2011

MG(CO)

rrs 26/11/2018



WEB COPY