

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2016

PRONOUNCED ON : 23.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Criminal Appeal No.310 OF 2011

M.Palanisamy

... Appellant/Complainant

Vs

Mrs.S.Malini

...Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of CrI.P.C to set aside the judgment in C.A.No.58 of 2007 dated 22.08.2007 by the Court of the Additional Sessions Judge and Presiding Officer, Special Court for E.C Act cases, Coimbatore and call for the records and convict the accused by confirming the judgment of the lower Court in C.C.No.598 of 2004 on the file of the Judicial Magistrate No.II, Coimbatore, dated 01.02.2009.

For Appellant : Mr.L.Mouli.

For Respondent : Mr. R.John Satyan.

J U D G M E N T

This appeal arises against the judgment in C.A.No.58 of 2007 dated 22.08.2007 passed by the Court of the Additional Sessions Judge and Presiding Officer, Special Court for E.C Act cases, Coimbatore, reversing the judgment passed in C.C.No.598 of 2004 on the file of the Judicial Magistrate No.II, Coimbatore, dated 01.02.2009.

2. It is the case of the appellant is that the respondent borrowed a sum of Rs.1,50,000/- on 20.03.2003 and executed a pronote for the said amount agreeing to repay the same with interest at 24% per annum. The respondent/accused paid interest upto 20.06.2003 and thereafter, inspite of several demands, the respondent did not repay the loan amount. In order to discharge his liability, the respondent/accused issued a cheque bearing No.084121 dated 03.09.2003 drawn on Central Bank of India, Coimbatore when the same was presented for encashment in Dhanalakshmi Bank, Gandhipuram by the appellant, the said cheque was dishonoured and returned on 04.09.2003 with an endorsement "insufficient funds". Therefore, he sent a legal notice to the respondent on 08.09.2003 and the respondent acknowledged the

notice on 09.09.2003 and sent a reply with false allegations on 16.09.2003. The cause of action arose on 23.08.2003 on which date the amount has to be repaid and as such, the loan was not repaid by the respondent, the appellant complying with the mandates of section 138 of Negotiable Instruments Act, filed the complaint before the trial Court.

3. During trial, on the side of the appellant, the appellant himself was examined as PW.1 and Exs.P1 to P6 were marked. On the side of the respondent/accused, DW.1 and DW.2 were examined and Exs.D1 to D4 documents were marked. After completing trial the trial Court convicted the accused under Section 138 of Negotiable Instruments Act.

4. Feeling aggrieved by the conviction and sentence passed by the learned Magistrate, respondent preferred the Criminal Appeal in C.A.No.58 of 2007 on the file of the Additional Sessions Judge and Presiding Officer, Special Court for E.C.Act Cases, Coimbatore.

5. The first Appellate Court after hearing the both sides found that the appellant herein has not proved the case beyond reasonable doubt and to set aside the conviction and sentence passed by the trial Court.

6. Against the judgment of acquittal, the complainant has filed the present appeal before this Court.

7. The case of the appellant is that the respondent borrowed a sum of Rs.1,50,000/- on 20.03.2003 from the appellant for his urgent needs and executed a demand promissory note in favour of the appellant. According to him, appellant has to repay the same with interest at the rate of 24% per annum. The respondent paid interest only upto 20.06.2003 and did not pay the interest from 21.06.2003 till the filing of the complaint. The respondent did not pay the principal amount and interest and hence, the appellant demanded for repayment and the respondent has issued post dated cheque on 01.08.2003 bearing cheque No.084121 dated 03.09.2003 drawn on Central Bank, Coimbatore for a sum of Rs.1,50,000/- in favour of the appellant towards the settlement of principal amount to the appellant. When the appellant presented the above said cheque for collection in his bank, the said cheque was returned unpaid for the reason "insufficient funds". Therefore, the appellant sent a notice to the respondent.

8. In order to prove the case, the appellant before the trial Court was examined as PW.1. On his side, he has marked copy of the promissory note, cheque issued by the respondent and returned memo issued by the respondent's bank to appellant and the legal notice issued by the appellant, the acknowledgement card and reply notice issued by the respondent.

On questioning under Section 313 Cr.P.C., the accused denied the evidences. On the side of the respondent, two witnesses were examined and four exhibits were marked viz., copy of receipt dated 03.05.2003, copy of complaint dated 03.05.2003, letter of the respondent addressed to the police dated 06.05.2003 and letter of the appellant addressed to the police dated 06.05.2003. Trial Court, on appreciation of materials before it, convicted the appellant/accused for offence u/s.138 of the Negotiable Instruments Act and sentenced to five months S.I. and fine of Rs.4,000/- in default 1 month S.I. There against, respondent/accused preferred criminal appeal in C.A.No.58 of 2007 on the file of the learned Additional Sessions Judge & Presiding Officer, Special Court for EC Act Cases, Coimbatore, which came to be allowed under judgment dated 22.08.2007. Hence, the complainant has filed the present appeal.

9. On a perusal of the complaint, the evidence let in by both the parties, specifically, the case of the appellant that the respondent/accused borrowed a sum of Rs.1,50,000/- on 20.03.2003 from him and executed a promissory note and agreed to pay the amount with interest. Further, he has specifically stated that the respondent/accused paid interest only up to 20.06.2003 and did not pay the interest from 21.06.2003 till the date of filing of the complaint. The appellant has specifically stated that the respondent/accused did not pay the principal amount in spite of repeated demand after demands made by the appellant on 01.08.2003. Later on, he issued a post-dated cheque bearing No.084121 drawn on Central Bank of India, Coimbatore, for a sum of Rs.1,50,000/- in favour of the appellant towards the settlement of the principal amount of the complaint. It is seen that he has not paid interest at 24% when he has paid the interest up to 20.06.2003 for which even there is no endorsement on the back side of the promissory note and no separate receipt has been given. After 21.06.2003, till the date of filing of the complaint, the respondent did not pay any interest but whereas the respondent/accused issued only post dated cheque bearing No.084121 dated 03.09.2003 drawn on Central Bank of India, Coimbatore for a sum of Rs.1,50,000/- towards settlement of the principal amount. Whereas, for the months of July and August, the respondent/accused has not paid interest. Simply, he issued the cheque only for Rs.1,50,000/- i.e., principal amount alone and the appellant has presented the cheque on 03.09.2003. According to the appellant, from 21.06.2003 to till the presentation of the cheque dated 03.09.2003 no interest was paid. The evidence of DW.2, husband of the respondent, would go to show that the appellant is financially sound person and he lent only Rs.40,000/-. Even in the year 2003, he made a complaint before the Police Station and Police enquired on 06.05.2003 and respondent/accused agreed to settle the amount of Rs.40,000/- to the appellant towards full quit and the respondent agreed to not to disturb him. During the

examination, the respondent has totally denied the charges. Regarding the complaint before the Police Station, DW.1 clearly has spoken that DW.2 is her husband and also the copy of the complaint is also marked as Ex.D2 which clearly shows that even prior to the complaint before the Magistrate and even before presentation of the cheque, there was a dispute between DW-2 and respondent/accused. The appellant appeared before the Police Station and also agreed to receive the amount of Rs.40,000/- and undertook to not to disturb the appellant/accused.

10. During the examination, respondent/accused has clearly denied the complaint lodged against him and also there was enquiry against him and did not appear before the police station and also during the examination not at all spoken about the complaint given before the Police Station. But whereas he has categorically stated that several incident took place in the Police Station, Chennai and the evidence about incidents in police station out of memory cannot be acceptable one and especially, the respondent/accused given a reply in EX.B6 stating that already he lodged a complaint viz., Ex.B7-Ramanathapuram Police Station. Therefore, the First Appellate Court found that the appellant has not approached the Court with clean hands, before the date of issuance of alleged cheque, there was a dispute between the husband of the respondent and the appellant. If that be the case, definitely, the respondent would not have executed post dated cheque on 01.08.2003 bearing cheque No.084121 dated 03.09.2003. Therefore, the trial Court failed to consider this aspects and accepted the case of the appellant and the first Appellate Court has rightly re-appreciated the entire oral and documentary evidence and found that there is suspicion and held that appellant has not proved his case beyond reasonable doubt and accordingly, set aside the judgment of the trial Court and acquitted the respondent.

11. This Court does not finds any illegality or infirmity or perversity in the finding given by the first Appellate Court when there is a possibility of two views benefit of doubt always be extended to the accused and there is no reason to confirm the judgment passed by the trial Court in view of the order passed by the first Appellate Court.

12. In the result, the Criminal Appeal stands dismissed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ub/tsh

To

1. The Additional Sessions Judge and Presiding Officer,  
Special Court for E.C Act cases, Coimbatore.

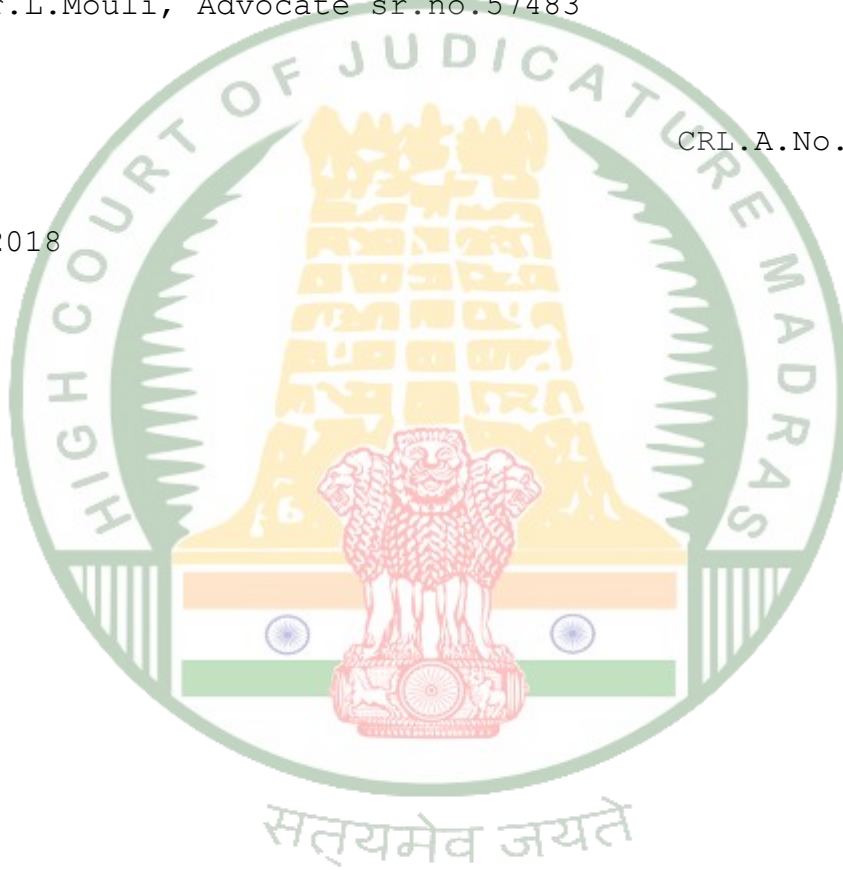
2.The Judicial Magistrate No.II, Coimbatore.

3.The Record Clerk, VR Section, High Court Madras.

+1cc to Mr.L.Mouli, Advocate sr.no.57483

Judgment in  
CRL.A.No.310 OF 2011

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