IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.732 of 2011

Yogachitra .. Appellant/Complainant

Vs.

V.Kanchana .. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment dated 06.09.2011 in C.A.No.76/2011 on the file of Additional District Judge, (Fast Track Court No III) Coimbatore, wherein, the order of conviction and sentence passed in the judgment dated 22.03.2011 in C.C.No.174/2009 on the file of Judicial Magistrate No.V, Coimbatore is reversed.

For Appellant : Mr.A.V.Raja

For Respondent : Mr.P.R.Thiruneelakandan

J U D G M E N T

This appeal is directed against the judgment dated 06.09.2011 in Criminal Appeal No.76/2011 on the file of Additional District Judge, Fast Track Court No.III, Coimbatore, wherein, the learned Additional District Judge reversed the judgment rendered by Judicial Magistrate No.5, Coimbatore in C.C.No.174/2009 in which the respondent is convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and directed to pay a sum of Rs.1,00,000/- to the complainant as compensation under Section 357(3) Cr.P.C.

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2. The case of the appellant in brief is as follows:-

i) On 25.06.2008 the respondent borrowed a sum of Rs.1,00,000/- as hand loan for his urgent need. Further, he agreed to repay the said loan with interest at 18% per annum for that he executed a pro note under Ex.P.1.

ii) Subsequently, neither the principal nor the interest has not been paid by the respondent. However, due to

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the repeated demands made by the appellant on 11.09.2008 the respondent had issued a cheque for Rs.1,00,000/- bearing S.No.982570 drawn on State Bank of India, City branch, Coimbatore, in favour of the appellant towards the discharge of loan.

iii) Inturn, the appellant presented said cheque for encashment in Indian Bank main branch Coimbatore, in which he is having the account. On 16.09.2008 the same has been returned as unpaid with a reason "refer to drawer". So on 17.09.2008, the appellant issued a legal notice to the respondent in which he demanded to repay the cheque amount within 15 days from the date of receiving the notice. The said notice was recieved by the respondent on 24.09.2008. Thereafter, she had not repaid the cheque amount as requested in the notice.

iv) So without anyother option, the appellant filed a private complaint before Judicial Magistrate No.5, Coimbatore alleging that the respondent committed the offence under Section 138 of Negotiable Instruments Act. During the course of trial proceedings, the appellant has examined as P.W.1., in his evidence, he has stated the particulars of loan transaction. Further, he exhibited the seven documents. Moreover, the bank officials have been examined as P.W.2. On the side of respondent, the respondent examined herself as R.W.1 and one Indrani was examined as R.W.2. Further, the sample signature obtained by the authorities of State Bank of India from the respondent is marked as Ex.R1. After the conclusion of the trial, the learned Magistrate came to the conclusion that the respondent is guilty of the offence under Section 138 of Negotiable Instruments Act.

v) Against the said conviction and sentence the respondent preferred an appeal before the District Court, Coimbatore in which it was decided that the respondent is not guilty of the said offence and the judgment rendered by Judicial Magistrate No.5 was set aside.

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vi) Now, the appellant being the complainant in trial Court approached this Court by way of this appeal praying to set aside the judgment rendered by the Additional District Judge, in criminal appeal No.76/2011 and further prayed to restore the conviction and sentence passed by the Judicial Magistrate No.5, Coimbatore.

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vii) Now, on going through the judgment of criminal appeal No.76/2011 it is seen that the learned Additional District Judge took the view that the execution of the cheque is not proved by the appellant. Further, he came to the conclusion that the appellant has not been proved the signature found in the cheque alleged that it belongs to the respondent.

viii) In this regard, the learned counsel appearing for the appellant would submit that in the cross-examination, the respondent herself admitted that the signature found in the cheque belongs to her. Further, he added that she admitted the issuance of the cheque and putting her initial after the name. But the learned Additional District Judge without going into the said aspect reversed judgment rendered by the Judicial Magistrate No.5, which is nothing but erroneous one.

ix) On the other hand, the learned counsel appearing for the respondent contended that the bank authorities examined on the side of complainant stated in their evidence that the signature found in the cheque is not belongs to the respondent, specifically they depose that the cheque have been returned only for the said reasons. Further, the counsel submits that it is an admitted fact that the year mentioned in the cheque was altered which amounts to material alteration. Accordingly, he prayed to dismiss this appeal.

3. Now, on considering the arguments advanced by either side, with the material available in this case, it is true on going through the cheque which was marked as Ex.P.2 it appears that the year of cheque was altered as 2008. However, on close scrutiny of the said cheque, it reflects that during the time of issuing the cheque to the customer the year was printed as 19. It shows that the said cheque is printed before 1999 and not otherwise. Subsequently in the year 2008 the cheque was used, so alteration is necessary. Hence, the alteration made in the year is not comes under the purview of Section 78 of Negotiable Instruments Act. Further, it is true that the initial of the respondent has been placed in the cheque after the name "Kanchana". But at the same time, in the specimen signature found in Ex.R1., produced by the bank authorities shows that the initial of the respondent is found place before the name Kanchana. In this regard, the Deputy Branch Manager, State Bank of India, examined as P.W.2 has stated in his cross-examination the initial of the customer found place not in accordance with the sample signature, hence the cheque was returned. In the said circumstances, the bank authorities who are the expert in comparing signatures in day to

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day business are also not in a position to confirm that the signature found in the cheque belongs to R.W.1 or not. In this regard, P.W.2 has stated in his cross examination as the signature found in the cheque may belongs to the respondent or may not belongs to respondent.

4. No doubt, since the signature found in the cheque is under dispute. It is the duty to the appellant to prove the execution of cheque. In order to prove the execution, it is necessary and mandatary on the part of the appellant to prove the signature found in the instrument belongs to respondent. But in this case, in order to prove the execution on the side of the appellant, nobody was examined except P.W.1. Even the witness signed in the pro note, who is the wife of P.W.1 had not been examined to prove the signature of respondent.

5. Since, the execution itself is not proved as above, it is needless to discuss the other points which are necessary for constituting the offence under Section 138 of Negotiable Instruments Act. Furthermore, P.W.2 in his evidence clearly has stated that on the date of returning the cheque as unpaid the account stands in the name of the respondent is closed.

6. Therefore, in the light of the above discussion, this Court affirm the decision of the first appellate Court and find that the judgment rendered by the Additional District Judge, Fast Track Court, No-III, Coimbatore does not need any interference.

7. Hence, criminal appeal is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To
1. The Additional District Judge, (Fast Track Court No III) Coimbatore.
2. The Judicial Magistrate No.V, Coimbatore

+1cc to Mr.P.R.Thiruneelakandan, Advocate Sr.No.43267

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