



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.Nos.358 & 359 of 2015

1.M.Ramakrishnan	.. Appellant/Complainant in Crl.A.No.358/2015
2.Ganesh Prabhu	.. Appellant/Complainant in Crl.A.No.359/2015

Vs.

1.Vinoth	.. Respondent/Accused in Crl.A.No.358/2015
2.V.Sujitha	.. Respondent/Accused in Crl.A.No.359/2015

Common Prayer: Criminal Appeals filed under Section 378 of Criminal Procedure Code, to set aside the order of acquittal dated 31.07.2014 made in C.A.Nos.113 and 103 of 2013 respectively, on the file of IV Additional District and Sessions Judge of Coimbatore reversing the judgment made in S.T.C.Nos.252 and 253 of 2012 respectively, on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore.

For Appellants : Mr.V.Anandhamoorthy

For Respondents : Mr.K.Moorthy

C O M M O N J U D G M E N T

These appeals are directed against the judgment of acquittal dated 31.07.2014 made in C.A.Nos.113 and 103 of 2013 respectively on the file of IV Additional District and Sessions Judge of Coimbatore reversing the judgment dated 31.07.2013 made in S.T.C.Nos.252 and 253 of 2012 respectively on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore by allowing these criminal appeals.

2.The appellants herein are the complainants, they filed a complaint before the Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore. After trial, the Magistrate came to the conclusion and found that the accused are



guilty for the offence under Section 138 of Negotiable Instruments Act and convicted the accused and sentence to undergo six months simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months under Section 255(2) Cr.P.C.

3. Against which the respondents filed the appeals before Sessions Judge, Coimbatore in C.A.Nos.113 and 103/2014 respectively. The Appellate Court after hearing both sides reversed the judgment dated 31.07.2013 made in S.T.C.Nos.252 and 253 of 2012 respectively. Against which, the appeals have been preferred by the appellants before this Court.

4. The learned counsel for the appellants would submit that though the respondents have taken three defence, which are as follows:-

"-The signature found in the cheque was not that of the accused.

-The Statutory notice was not served on the accused.

The cheque was handed over to one by name Umashankar as a security for getting a loan, the signature was not put by the accused and the cheque was also not filled by him. This complainant was a stranger."

5. Whereas, once the complainant proved the alleged cheques are that of the accused and signatures are that of the accused, the legal presumption under Section 139 of the Act that the cheques are issued to discharge the legally enforceable debt. Therefore, under these circumstances, the trial Court has rightly appreciated the evidence and convicted the respondents under Section 138 of the Negotiable Instruments Act. Whereas, the appellate Court failed to consider this legal proposition and without giving valid reasons, allowed the appeals and set aside the judgment of the trial Court. Therefore, the appellants are before this Court.

6. The learned counsel for the respondents would submit that the signature found in the cheques were not that of the accused/respondents, the presumption under Section 139 of Negotiable Instruments Act will not be attracted. The appellants have not proved the transactions between the parties. There is no privity of contract between them and there is no relationship between the appellants and respondents.

7. According to the respondents, the respondents issued blank and unsigned cheque leaves for security purpose and not signed any document. The appellants have not proved the



signatures found in the cheques. Though, the trial Court convicted the respondents, the appellate Court after re-appreciating the oral and documentary evidence rightly acquitted the respondents.

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8. Heard the rival submissions made on both sides and perused the records.

9. On a perusal of the notice issued in both the cases, the very same advocate issued notice on behalf of the two complainants. Though respondent has taken the specific defence that they have not borrowed any money from the appellants respectively. But at the same time they are specifically denied the money transaction between the appellants and respondents. It is the duty of the appellants to prove that there was some money transaction between the parties. Mere producing the cheques in favour of the appellants will not create any liability on the respondents. It is the duty of the appellants/complainants to prove that the cheques are issued for discharging legally enforceable debt.

10. Since the Lower Appellate Court is a fact finding Court and re-appreciated the entire evidence and has given reason for findings. On a perusal of the materials on record, the period of transaction between the appellants and respondents was not established and also the service of notice have not been proved. If two views are possible, the benefit of doubt should be extended in favour of the accused/respondents. Therefore, it is the duty of the appellants to prove the case beyond any reasonable doubt. Normally this Court cannot interfere in the judgment of acquittal unless there is a compelled circumstances warrants to interfere with the judgment of acquittal. In this case there is no such compelled circumstances warrants to interfere with this judgment of Lower Appellate Court. This Court finds there is no merit in the appeals and the appeals are liable to be dismissed.

11. Accordingly, both the appeals are dismissed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The IV Additional District and Sessions Judge,
Coimbatore

2. The Judicial Magistrate, Fast Track Court
at Magistrate Level-II,
Coimbatore.

+2 ccs to M/s.V.Anandhamurthy, Advocate, S.R.No.57623 and 57624

+2 ccs to M/s.K.Moorthy, Advocate, S.R.No.57844 and 57843

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NMI (CO)
SSM(02/08/2019)