IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016

PRONOUNCED ON : 23.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Criminal Appeal No.196 OF 2010

P.Kaliappan

.. Appellant/Complainant

Vs

K.Balasubramanian

..Respondent/Accused

Prayer : Criminal Appeal filed under Section 378 (4) of Cr.P.C against the judgment of acquittal of the respondent dated 19.02.2010 passed in C.A.No.8 of 2010 by the learned Additional District Sessions Judge, Fast Track Court No.I, Salem, reversing the judgment passed in S.T.C.No.297 of 2008 dated 23.12.2009 by the learned Judicial Magistrate No.VI, Salem, and prays that this Court may be pleased to set aside the order of acquittal and convict the respondent u/s.138 of the Negotiable Instruments Act.

For Appellant :Mr.K.V.Sridharan

For Respondent :Mr.R.Ezhilarasan

J U D G M E N T

This appeal arises against the the judgment in C.A.No.8 of 2010 by the learned Additional District Sessions Judge, Fast Track Court No.I, Salem, reversing the judgment passed in S.T.C.No.297 of 2008 dated 23.12.2009 by the learned Judicial Magistrate No.VI, Salem.

2. The case of the appellant is that he is a lorry broker and that the respondent herein borrowed a sum of Rs.75,000/- from him and agreed to pay the said amount with the interest at the rate of 12% per annum. The respondent issued a cheque bearing No.750461 for Rs.75,000/- dated 12.12.2007 drawn on the ING Vysya Bank Limited, Salem Branch. While issuing the cheque, the respondent promised that it would be honoured as and when the same is presented for collection. But when the appellant presented the cheque on 12.12.2007 through his bankers, the Karur Vysya Bank, Karipatty Branch, it was dishonoured on the ground of "insufficient of funds". Therefore, the appellant approached the respondent and asked him about the return of the

cheque, the respondent claimed some excuses and requested the appellant to represent the cheque for payment on 16.01.2008 and assured that this time the cheque would be honoured. But that time also it was returned for the same reason "insufficient of funds". Therefore, the appellant sent a legal notice dated 23.01.2008 to the respondent. But the respondent though received the notice neither replied nor repaid the cheque amount. Therefore, the appellant filed this complaint against the respondent for the commission of offence under Section 138 of Negotiable Instruments Act before the learned Judicial Magistrate No.VI, Salem. The Judicial Magistrate took up the case filed in S.T.C.No.297 of 2008. Hence, the complaint.

3. During the trial, in order to prove the case of the appellant examined himself as PW.1. The Clerk of Karur Vysya Bank, Karipatty Branch by name C.Vimal Raj had been examined as PW.2. The Manager of Karur Vysya Bank, Karipatti Branch had been examined as PW.3. PW.1 has marked the original cheque for Rs.75,000/- as Ex.P1. The bankers memo is marked as Ex.P2 copy of the Advocate's notice marked as Ex.P3; Account statement of appellant's bank account is marked as Ex.P4; Postal acknowledgement card is marked as Ex.P5. On appreciation of materials before it, trial Court, under judgment dated 23.12.2009, convicted the respondent for the offence u/s.138 of the Negotiable Instruments Act and sentenced him to undergo two years S.I. and directed to pay double the amount of the cheque as compensation payable to the appellant. Against such finding, the respondent preferred criminal appeal in C.A.No.8 of 2010 on the file of learned Additional District and Sessions Judge, Salem, which came to be allowed under judgment dated 19.02.2010. There against, the present appeal has been filed.

4. The main case of the appellant is that the appellant has proved the case that the respondent borrowed a sum of Rs.75,000/- from the appellant and issued the cheque and on presentation, the subject cheque was returned. The trial Court rightly found that the respondent committed an offence but whereas in the first appeal, the appellate Court failed to consider the fact that the respondent admittedly has not denied the signature. Therefore, he filed the present appeal.

5. The learned counsel for the respondent would submit that the respondent denied the very means of the appellant itself. From the defence side, the respondent had been examined himself as DW1. Agreement, reply notice issued by the respondent to the appellant and postal acknowledgment card are marked as Exs.D1 to D3. The respondent wanted to purchase a second hand lorry and he approached Kaliappan. The Kaliappan took him to Suresh Kumar, who was owning a lorry bearing registration No.TN-07-5694. They approached Suresh Kumar through his uncle by name

Madheswaran. The sale price of the lorry was fixed as Rs.5,65,000/- and the respondent agreed for the same. The respondent paid a sum of Rs.40,000/- under Ex.D1. That apart, he paid a sum of Rs.40,000/- under Ex.D1. That apart he paid a sum of Rs.10,000/- to the uncle of the Suresh Kumar, the lorry owner herein by depositing the said amount into the bank account of the said Mahendran and he paid a sum of Rs.4,80,000/- to Sureshkumar by arranging it through a private finance. There was still a balance of Rs.35,000/- outstanding and payable from out of the sale price for which Sureshkumar insisted upon the respondent for the issuance of cheques. They obtained three cheques vide numbers 750461, 750462 and 750463 from the respondent. That apart they also obtained blank pronotes signed by him. In spite of all these payments made, the said Mahendran and Sureshkumar were yet to procure him the fitness certificate, etc for the lorry for which they asked the respondent to do it by himself and later on, deducted the said charges in the balance of Rs.35,000/- outstanding and payable by the respondent herein to Sureshkumar in the sale price of the lorry. Agreeing for the same, the respondent obtained fitness certificate for the lorry all by himself and in the said procedure he spent Rs.20,000/- and therefore deducting Rs.20,000/- from the balance amount of Rs.35,000/- he was due and payable to an extent of Rs.15,000/- only to the sellers. So, he approached Sureshkumar with the sum of Rs.15,000/-. He opted to pay Rs.15,000/- and get back the blank cheques and pronotes from them. But they in turn for returning the blank cheques and pronotes demanded Rs.63,000/- from the respondent, told him that only if the respondent pay Rs.63,000/- they would return the blank cheques and pronotes. The respondent has clearly stated the above said facts in his reply to the statutory notice issued by the appellant. This fact has not been considered by the trial Judge, the first Appellate Court appreciated this facts and this appellant is nothing to do with the money transactions with the respondent. The appellant had no money to pay Rs.75,000/- to the respondent. The appellant has suppressed these transactions and stated that the respondent received a sum of Rs.75,000/- from the appellant and issued the cheque and the respondent approached him personally and requested to present the cheque once again therefore the second time, presented the cheque dated 16.01 2008. Even that fact has not been proved by the appellant and simplified in order to make the cause of action and also the limitation and he has stated that when the first time returned, since the respondent requested the appellant to present the cheque once again hence he has not sent the notice and once again, he represented the cheque. The first appellate Court clearly appreciated the evidence placed before it rightly come to the conclusion that appellant has not proved his case.

6. This Court finds that there is no illegality or infirmity and perversity in the finding given by the first Appellate Court. There is a possibility to extend the benefits of doubt to the respondent, there is no reason to confirm the judgment passed by the trial Court in view of the judgment passed by the first appellate Court.

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

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
1. The Additional District Sessions Judge, Fast Track Court No.I, Salem.

2.The Judicial Magistrate No.VI, Salem.

3.The Public Prosecutor, High Court, Madras.

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

+1cc to Mr.R.Ezhilarasan, Advocate SR.NO.57511
+1cc to Mr.K.V.Sridharan, Advocate SR.NO.57792

NRL(CO)
sm:6.9.2018

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