IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.06.2018

JUDGMENT PRONOUNCED ON : 02.07.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.269 of 2010

Geetha Saravanan .. Appellant / Respondent / Complainant

versus

L.Chellaram .. Respondent / Appellant / Accused

Prayer: Criminal Appeal filed under Section 378(4) of the Code of Criminal Procedure, to call for the records of the case in C.A.No.347 of 2008 on the file of the Additional District and Sessions Judge [Fast Track Court No.III], Chennai - 600 001 and set aside the judgment of acquittal dated 22.10.2009, by restoring the trial Court judgment made in C.C.No.3994 of 2006 dated 27.11.2008 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai.

For Appellant : Mr.V.K.Sathiamurthy

For Respondent : Mr.N.Bhaskaran

J U D G M E N T

This Criminal Appeal is directed against the judgment rendered by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, in Crl.A.No.347 of 2008 dated 22.10.2009, wherein, he allowed the appeal filed by the respondent and set aside the conviction and sentence passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.3994 of 2006 dated 27.11.2008.

2. The case of the appellant / complainant in the Trial Court is as follows:

2.1. The respondent / accused had received a sum of Rs.6,00,000/- as hand loan and to discharge the said loan, he issued two cheques [(i)Cheque No.801762 dated 06.09.2005 for Rs.3,00,000/- and (ii) Cheque No.801763 dated 06.09.2005 for Rs.3,00,000/-] drawn on I.C.I.C.I. Bank Limited, Ashok Nagar

Branch, Chennai, in favour of the appellant. On 19.01.2006, the appellant presented both the cheques for collection through Canara Bank, West Mambalam Branch, but the same were returned as unpaid for the reason of "insufficient funds". The dishonour of cheques were duly intimated to the appellant on 20.01.2006. Thereafter, on 17.02.2006, the appellant issued a statutory notice [Ex.P.5] to the respondent for his two addresses. The said notices were served on the respondent on 20.02.2006 and 21.02.2006 respectively. Despite of receiving the said notices, the accused has neither paid the amount nor sent any reply. Thus, the appellant made a complaint before the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, by saying that the respondent committed the offence under Section 138 of the Negotiable Instruments Act.

2.2. In the Trial Court, the appellant had himself examined as P.W.1, besides 7 documents were exhibited as Ex.P.1 to Ex.P.7. On the side of the respondent, two witnesses were examined as R.W.1 and R.W.2 and 3 documents were exhibited as Ex.R.1 to Ex.R.3. After concluding the trial, the learned XXIII Metropolitan Magistrate, convicted the accused and sentenced to undergo one year Simple Imprisonment with a fine of Rs.5,000/-, in default to undergo 3 months Simple Imprisonment. As against the said conviction, the respondent filed the Criminal Appeal [Crl.A.No.347 of 2008] before the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai.

2.3. After elaborate enquiry, on 22.10.2009, the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, allowed the appeal and set aside the order of conviction. Against which, now the appellant being the complainant in the Trial Court approached this Court for setting aside the judgment passed by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai and for restoring the order of conviction passed by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

3. Heard Mr.V.K.Sathiamurthy, learned counsel appearing for the appellant and Mr.N.Bhaskaran, learned counsel appearing for the respondent. I have perused the grounds of appeal and also the judgments rendered by the Courts below.

4. It is an admitted fact that the cheques belong to the respondent and they bear the signatures of the respondent. Therefore, it can be presumed that the cheques were issued for the discharge of legally enforceable debt.

5. In this occasion, the learned counsel appearing for the respondent would submit that the cheques are now under

dispute is having the serial nos.801762 and 801763. According to the case of the appellant, the above cheques had issued by the respondent on 06.09.2005 but previous to the said date in the year 2002 itself the appellant has received a cheque from the respondent bearing Cheque No.801764 and encashed Rs.3,00,000/-. Further, he added the said period squarely shows that the cheque pertaining in this case was issued only as a security and not for any other purpose.

6. On considering the said argument, it is true that the Branch Manager, ICICI Bank Limited [D.W.1] stated in his evidence as on 23.10.2002, the respondent had issued a cheque bearing no.801764 to the appellant for Rs.3,00,000/-. In this regard, D.W.1 produced the statement of accounts pertaining to the respondent as Ex.R.1 and Ex.R.2. The said evidence was corroborated by the Branch Manager, Canara Bank, West Mambalam [D.W.2], who has stated in his evidence as on 23.10.2002, the appellant presented the cheque mentioned by D.W.1 for encashing Rs.3,00,000/-. Further, D.W.2 produced the statement of accounts as Ex.R.3.

7. Now, on considering the dates pertaining to the three cheques, it is not probable to the respondent for issuing a cheque having the serial no.801764 in the year 2002. It is unbelievable after issuing the cheque in the year 2002, the respondent had issued two cheques bearing serial Nos.801762 and 801763. Only based on the said evidence, the First Appellate Court came to the conclusion that the cheque pertaining to this case was issued as early as in the year 2002. So, the evidence given by the P.W.1 with regard to receiving of the cheque from the respondent is entirely unbelievable. In this way, the respondent has rebutted the evidence given by the appellant. Accordingly, this Court also came to the conclusion that the appellant has not proved the fact that the cheques were issued in order to discharge the loan availed by the respondent. So, the interference is not necessary in the judgment rendered by the First Appellate Court.

8. In the result, the Criminal Appeal is dismissed and the judgment of acquittal dated 22.10.2009 passed by the learned Additional District and Sessions Judge [Fast Track Court No.III], Chennai, in Crl.A.No.347 of 2008 is hereby confirmed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Additional District and Sessions Judge
[Fast Track Court No.III],
Chennai - 600 001.

2.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai. (2 copies)

+2cc to Mr.V.K.Sathiamurthy, Advocate Sr.No.42064
+1cc to Mr.N.Baskaran, Advocate Sr.No.43108

SVI(CO)
sm:13.7.2018

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