IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 09.04.2018]

[Pronounced on : 10.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.154 of 2008

M/s. Sri Vari Balaji Financiers,
a Partnership Firm represented by,
its Authorised Power Agent,
S.K.Aravindakshan,D.No.157,
NSR Road,Saibaba Colony,
Coimbatore - 641 011. ...Appellant/Complainant

.. Vs ..

Manimozhi,
W/o. C.M.Ramaraj,
Proprietrix, M/s. Nandhini Distributor Agency,
92-F, RMC Complex,Palghat Main Road,
Kuniamuthur, Coimbatore - 641 008. ...Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C. against the order of acquittal dated 09.01.2008 made in STC No.2351 of 2005 on the file of the learned Judicial Magistrate No.VII, Coimbatore, and prays to set aside the same.

For Appellant : Mr.P.Saravana Sowmiyan
For Respondent : Mr.P.Elango

ORDER

The appellant herein has filed a private complaint against the respondent for an offence under Section 138 of the Negotiable Instruments Act and the learned Judicial Magistrate No.VII, Coimbatore, has passed an order on 09.01.2008 in STC No.2351 of 2005, acquitting the accused. Challenging the said order of acquittal, the complainant had preferred this criminal appeal before this Court.

2. The case of the complainant is that the accused had borrowed a sum of Rs.3,00,000/- from the complainant company and agreed to pay interest at 24% per annum and also executed a Promissory Note. Thereafter, the accused had paid a sum of

Rs.72,000/- and for the balance amount of Rs.2,28,000/-, the accused had issued a cheque-Ex.P.2, dated 01.09.2005, drawn on Federal Bank, Kovai Veraity Hall Road Branch. On the same day, the said cheque was presented by the complainant and it was returned with an endorsement "Exceeds Arrangements". Thereafter, the complainant had issued a statutory notice-Ex.P.6 to the accused. Though the accused had received the said notice, she had not made any payment.

3. Before the trial Court, on the side of the complainant, one witness was examined as P.W.1 and documents Exs.P.1 to P.7 were marked. The accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances and she denied her complicity. On the side of the accused, one witness was examined as D.W.1 and documents Exs.D.1 to D.5 were marked.

4. The Trial Court, after analysing the oral and documentary evidence, has come to a conclusion that the appellant/complainant has doubted the issuance of the cheque while the very same complainant, who is running another company by name Sasi Finance, has instituted a cheque bounced case on 12.04.2005 for a sum of Rs.6,00,000/- alleging that the cheque was issued by the very same respondent for Rs.3,00,000/-. During the pendency of that case, the cheque in question in this case claims to have been issued and hence, doubted the very nature of the coming into the existence of the cheque and also held that the complainant is not entitled for presumption and accordingly, dismissed the complaint.

5. Learned counsel appearing for the appellant/complainant would contend that the learned Magistrate had failed to see that the accused has not rebutted the presumption under Section 139 of the Negotiable Instruments Act. It is further contended that the learned Magistrate has failed to see that under the Negotiable Instruments Act, the burden is upon the accused to prove that the cheque had not been issued for a legally enforceable debt and she has not committed the offence. The learned counsel for the appellant/complainant also contended that the learned Magistrate is erred in holding that since already a complaint filed by the complainant was pending against the accused and during the pendency of that case, the issuance of another cheque by the accused is highly doubtful. Further, the learned Magistrate has failed to see that the accused has admitted the signature in the cheque and the execution of the cheque to the complainant was proved, which would establish the offence committed by the accused and hence, the learned counsel for the appellant/complainant prayed to set aside the order passed by the learned Magistrate.

6. The question is as to whether the order of the trial Court is sustainable in law?. The appellant/complainant has come forward with a specific case before the jurisdictional Magistrate that they are running a finance company and on 12.04.2005, the respondent/accused has borrowed a sum of Rs.3,00,000/-, and executed a promissory note, paid part payment of Rs.72,000/- and for the balance amount she had issued the cheque in question on 01.09.2005 for a sum of Rs.2,28,000/- and the same was bounced and hence, the complaint was filed and on behalf of the complainant, his Power of Attorney was examined and documents have been marked.

7. The respondent/accused has come forward with the suggestive case that she was dealing with the Nestle India Limited Company upto 2003 and in view of the loss in the business, she has wind up her company also filed Ex.D.1-Final settlement of Nestle company and Ex.D.2-Income Tax Report. It is the specific case of the accused that her husband is having a chit fund transaction with the appellant and also with Susi Balaji Chit Funds and for which, he has given the signed blank papers and the same has been misused and he never knew the complainant company. Before the trial Court, on behalf of the complainant company, General Power of Attorney was examined as P.W.1. He had stated that he is not aware of the transaction of the complainant company with the accused as claimed in the complaint. Furthermore, though the complainant has raised a specific plea that the respondent/accused has borrowed amount and executed a promissory note and paid only a small portion of the amount and for the balance amount, the cheque in question was issued for the reasons best known, the alleged promissory note was not produced before the trial Court and on this point, the trial Court has commented upon for non production of the alleged pro note said to have been executed by the respondent/accused which goes to the root of the matter namely, pre-existing legally enforceable debt and further, in the cross-examination, P.W.1 has categorically admitted that his another company namely, Sasi Finance had instituted a case in C.C.No.1071 of 2005 against the very same respondent/accused and the same has been filed on 12.04.2005 in respect of a cheque for a sum of Rs.3,00,000/- and the cheque in that case is having the serial number as 574245. The trial Court, based upon the admission in the cross-examination of P.W.1, held that the subject matter of the cheque in C.C.No.1071 of 2005 having Sl.No.574245 could not have been issued during the relevant point of time.

8. Taking into consideration the contradiction in the dates and issuance of the cheque and the alleged legally enforceable debt as spoken to by P.W.1, the trial Court has entertained doubt as to the truth and veracity of P.W.1 regarding coming into possession of the cheque on 01.09.2005 especially, when the cheque in issue in C.C.No.1071 of 2005 which was instituted in

the Month of April 2005 bears the previous number of the cheque which is being hotly contested before the very same Court and the very same P.W.1 has deposed in the witness box on behalf of that company and thus, the trial Court has come to a conclusion that the alleged possession of the cheque by the private complainant/appellant bearing the date 01.09.2005 is highly improbable and highly doubtful, since even in the Month of April 2005 during the pendency of the case in C.C.No.1071 of 2005 coupled with the fact that the factum of admission by P.W.1 in the cross-examination about the non filing of the pro-note alleged to have been executed shows that there was a legally enforceable debt, is doubtful, the trial Court has come to a conclusion that the respondent/accused has demonstrated his suggestive case in the manner known to law and accordingly, dismissed the complaint.

9. In view of the admission by P.W.1 with regard to the coming into the existence of cheque coupled with the non filing of the pro-note alleged to have been executed in favour of the complainant/finance company and projection of the case as if, during the pendency of the case in C.C.No.1071 of 2005, the present cheque was said to have been issued and there is lack of evidence on the part of P.W.1, the trial Court has come to a conclusion that the complainant does not made out a case and rejected the complaint. Therefore, I am of the view that there is no illegality or irregularity in the order passed by the trial Court. Hence, this Criminal Appeal is dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

JRL

To

The Judicial Magistrate No.VII,
Coimbatore.

Copy To
The Section Officer,
Criminal Records,
High Court,Madras.

CNR(CO)
BM 23/07/2018