IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2016

PRONOUNCED ON : 28.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Criminal Appeal No.31 of 2010

P.Selvakumar .. Appellant/Complainant

Vs

K.Balasubramani ..Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 (4) of Crl.P.C to set aside the judgment of the Judicial Magistrate No.II, Mettur, dated 29.05.2009 made in STC.No.405 of 2007 and consequently allow the compliant filed by the appellant herein.

For Appellant :Mr.T.S.Vijaya Raghavan

For Respondent :Ms.Valliamma
for Mr.M.Christopher.

J U D G M E N T

This appeal arises against the judgment passed by the learned Judicial Magistrate No.II, Mettur, in STC.No.405 of 2007 dated 29.05.2009.

2. The case of the appellant is that the appellant and the respondent are friends and the appellant is doing contract business. The respondent approached the appellant/complainant and asked for financial assistance for which, he agreed to help him in his needs. Hence, during the 1st week of May 2007, the respondent herein borrowed a sum of Rs.4,50,000/- (Rupees four lakhs fifty thousand only) from the appellant for his contract business purposes. Subsequently, during the 2nd week of May, the respondent herein borrowed another amount of Rs.4,10,000/- (Rupees four lakhs and ten thousand only). At that time, the respondent herein issued post dated cheques bearing Nos.908949 and 908950 respectively in favour of the appellant to be drawn from his bank account at State Bank of India, Salem-I towards discharge of the said loan amounts. Believing the words of the respondent, the appellant presented both the cheques for collection in his bank account at Salem District Central Co-operative Bank Ltd., Salem District. But the said Bank returned the cheques with an endorsement “Funds Insufficient” in the account of the respondent on 04.07.2007. Knowing fully well that

there will be no sufficient funds in the respondent's account to honour the cheques. Hence, the appellant issued legal notice to the respondent. Even though, the respondent acknowledged the notice, he has not come forward either to pay the amount or to issue any reply. Thus, the respondent had an intention of cheating the appellant and thereby committed the offence under Section 138 and 142 of the Negotiable Instruments Act. Therefore, there is no other option for the appellant, except to file the complaint before the Jurisdictional Magistrate. The Magistrate has taken the case on file in S.T.C.No.405 of 2007.

3. On the side of the appellant, the complainant himself was examined as PW.1 and one Sathyanarayanan was examined as PW.2 and eight documents were marked as Exs.A1 to A8. On the side of the respondent, 3 witnesses were examined and 4 documents were marked as Exs.B1 to B4. After considering the oral and documentary evidence on record, the Magistrate dismissed the case stating that the appellant had failed to prove the case beyond reasonable doubt and acquitted the respondent. Feeling aggrieved, the appellant has preferred the present appeal.

4. The learned counsel for the appellant would submit that the learned Judge erred in coming to the conclusion that the appellant has failed to prove his case that the cheques have been issued for a valuable consideration for discharging legally enforceable debt and he failed to note that the respondent herein has clearly admitted that the cheques were found missing immediately, after the appellant threatened to recover the amount from him in his own manner and stopped attending to his works for a period of ten days. He also failed to note that the inaction on the part of the respondent, after he knew that blank cheques were missing along with the blank stamp papers is conspicuous and unbelievable, since he found the same immediately after the dispute between the parties.

5. The learned Magistrate is erred in coming to the conclusion that evidence of RW-2 is cogent and failed to note that he is working under RW1 and he is an interested witness and even the evidence of RW-1 is full of demur and any amount of corroboration by RW-2 would be futile. The non reply to the statutory notice is fatal to the case of the respondent. The learned Magistrate erred in coming to the conclusion that during the period of the transaction, there could not have been any cordial relationship between the parties. The fact remains that after the formation of the partnership, they did not do any business and the issue of dispute between the partners is an alibi, set up by the respondent. The learned Magistrate failed to note that the evidence in this regard by RW1 and RW2 are self serving statement and the deposition of the chief and cross

examination of RW-2 which shows that he did not know anything about the alleged transaction. Once the initial burden has been proved by the appellant, it is for the respondent to rebut the same. The learned Magistrate in this regard erred in brushing aside the vital aspect of the appellant's case a insignificant while dismissing the complaint. The learned Magistrate failed to note that even Ex.B1 the accounts statements produced is incomplete for the reason that it is only for a particular period and that the cheque leaves of the same booklet from which the cheques in questions have been issued could have come up for collection subsequently. The learned Magistrate in this regard failed to note that the non-mentioning of the exact date of borrowal cannot alone be cited to show that the appellant has not discharged his burden of legally enforceable debt.

6. The learned counsel appearing for the respondent submitted that the appellant had stolen two leaves of signed blank cheques, when he was associated with the respondent and had used the same to suit his needs by filing a false complaint. The respondent, in clear and unequivocal terms, admitted during his cross examination that the partnership which was formed in May 2005, between the appellant and the respondent and two others stopped functioning even before March 2006. The respondent further admitted that he did not prefer a complaint, when the cheques were lost or had not issued stop payment to his bankers and only after the receipt of notice from the appellant's Advocate, he understood that the cheques have gone to the custody of the appellant. In order to prove his defence, he has marked four documents and particulars of the respondent dated 15.04.2009 then the deed of partnership was marked as Ex.D2; the certificate of registration of the partnership firm was marked as Ex.D3; Certificate issued by Superintendent of Engineering was marked as Ex.D4. Therefore, the finding of the Magistrate is legally and factually sustainable and the appeal is liable to be dismissed.

7. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

8. On a perusal of available documents, the relationship between the appellant and the respondent has not been disputed. The appellant and his brother and the respondent and his wife were shown as partners in the partnership deed and for some reason or other, within a short period, there was misunderstanding, so that they could not continue the contract works as mentioned in the partnership deed. Be that as it may, it cannot be believed that the respondent borrowed a sum of Rs.4,50,000/- in the 1st week of May 2007 and further a sum of Rs.4,10,000/- in the 2nd week of May 2007 without any documents. He simply issued the post dated cheque dated 11.06.2007 bearing cheque No.908949 and another cheque dated

11.06.2007 bearing No.908950. Therefore, from the facts narrated in the complaint, evidence and the examination of witnesses, the learned Magistrate found that the appellant has not proved the case beyond reasonable doubt. When two views are possible, always the benefit of doubt has to be given in favour of the respondent in the case against the acquittal. The appellant has to prove the case that the cheques were issued for discharging of legally enforceable debt and the judgment passed by the learned Magistrate is perverse. So in this case, the appellant has not explained about the partnership deed entered between the appellant and the respondent, the appellant has lent the money to the respondent even without any documents. The cheque was presented within a month creates doubt, further the defence raised by the respondent has not been properly explained by the appellant and he has not denied the execution of Ex.D2 and D3. In these circumstances, there is no merit in the appeal. Hence, this Court finds that there is no perversity in the finding given by the Magistrate. When there is a possible of benefit of doubt, it can always be extended to the accused in the criminal case.

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

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ub/tsh

To
1. The Judicial Magistrate No.II, Mettur.

2. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.T.S.Vijaya Raghavan, Advocate sr.no.59174

Criminal Appeal No.31 of 2010

sj(co)
nr 25/09/2018