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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.62 of 2009

K.V.Rangarajan
S/o.Venkatachalapathy

... Appellant/Complainant

Vs

N.S.Venkatesan
S/o.Srinivasan

... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to call for the entire records connected in C.C.No.845 of 2004 on the file of the learned Judicial Magistrate No.V at Salem and set aside the judgment of acquittal passed on 21.11.2008.

For Appellant : Mr.P.Ezhil Nilavan

For Respondent : Mr.P.Mani

J U D G M E N T

This appeal has been filed by the appellant to set aside the judgment dated 21.11.2008 passed in C.C.No.845 of 2004 by the learned Judicial Magistrate No.V, Salem.

2. The case of the appellant before the trial Court is as follows:-

The appellant herein is the complainant in C.C.No.845 of 2004 on the file of the learned Judicial Magistrate V at Salem. He lodged a complaint against the respondent for the offence under Section 138 of the Negotiable Instruments Act. After concluding the trial, the learned Judicial Magistrate came to the conclusion that the respondent/accused is not found guilty for the said offence and acquitted the accused of all the charges. Against which, the appellant has approached this Court by way of filing this appeal praying to set aside the judgment rendered by the learned Judicial Magistrate and for convicting the respondent.



3. From the available materials, the case of the appellant before the trial Court is as follows:

(i) The appellant and the respondent are having business transactions. On 25.08.2004, the respondent availed a loan of Rs.2 Lakhs from the appellant, for which, he issued two cheques dated 09.10.2004 and 15.10.2004 for the value of each Rs. One Lakh respectively. The appellant presented both the cheques on 16.10.2004 for encashment. But, the said cheques were returned with the endorsements "Funds insufficient". The particulars of the returns were intimated to the appellant on 16.10.2010 itself. Thereby, the appellant issued a statutory notice on 28.10.2014, in which, he demanded to pay the cheque amount within 15 days from the date of receipt of statutory notice. The said notice was received by the respondent on 29.10.2004. Subsequently, the respondent had not repaid the cheque amount even he has not chosen to send reply. Hence, the appellant lodged a complaint before the learned Judicial Magistrate No.V, Salem.

(ii) In the trial Court, during the course of trial proceedings, on the side of the appellant, the appellant examined himself as P.W.1 and six documents were marked as Ex.P.1 to Ex.P.6. On the side of the respondents, two witnesses were examined as D.W.1 and D.W.2 and four documents were marked as Ex.D.1 to D.4.

(iii) After concluding the trial, the learned Judicial Magistrate, Salem came to the conclusion that the respondent is not found guilty of the offence punishable under Section 138 of Negotiable Instruments Act and acquitted of all the charges.

(iv) As against the judgment dated 21.11.2008, in C.C.No.845 of 2004 passed by the learned Judicial Magistrate No.V, Salem, the appellant herein preferred the appeal before this Court.

4. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr. Ezhil Nilavan, learned counsel appearing for the appellant and Mr. P. Mani, learned counsel appearing for the respondent.

5. The first and foremost contention raised by the learned counsel appearing for the appellant is that since the respondent has admitted the signature found in the cheque. It is for him to prove that the alleged cheque has not been issued to the appellant, for discharging the liability, by way of putting the probable defence for which he referred the decision of the Hon'ble Apex Court in Rangappa vs. Sri Mohan in Criminal Appeal No.1020 of 2010.



he had stated that the income tax particulars submitted by the appellant for the period 2003 - 2005, the particulars with regard to loan given to the respondent has not been shown.

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9. Accordingly, on comparing the evidence of P.W.1 with evidence of D.W.1, which clearly indicates that the appellant had not approached this Court with clean hands. The liability of the respondent has not been proved. The trial Court also considering the same aspects and came to the conclusion that the respondent is not found guilty for the offence under Section 138 of the Negotiable Instruments Act, thereby, this Court also holds the same view.

In view of the above, the appeal is dismissed. The judgment dated 21.11.2008 passed in C.C.No.845 of 2004 by the learned Judicial Magistrate V at Salem is confirmed.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

cla

To
The Judicial Magistrate No.V,
Salem.

2.The section officer,
criminal section
high court
madras
+1 cc to MR.P.MANI Advocate SR.NO. 41552

Cr1.A.No.62 of 2009

NRI (CO)
ASK(29/08/2018)