

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.No.131 of 2006

Jaisankar

... Appellant

Vs.

Srinivasan

... Respondent

Prayer: The Criminal Appeal filed under Section 378(4) of Cr.P.C to allow the appeal setting aside the Judgment of Acquittal passed in C.C.No.169/2000 dated 07.02.2005 by the Judicial Magistrate No.II, Cheyyar, Thiruvannamalai District.

For Appellant : Mr.M.P.Jayaprakash

For Respondents : No appearance

JUDGMENT

The appellant in this case is the complainant under Section 138 of the Negotiable Instrument Act. The complaint filed by the complainant in C.C.No.169 of 2000 on the file of Judicial Magistrate No.-II, Cheyyar ended in acquittal. Aggrieved by the same, this appeal has been filed.

2.Heard the learned counsel appearing for the appellant / complainant.

3.The accused was served with notice in the criminal appeal and the he had entered appearance through counsel. But today, there is no representation on his behalf. Therefore, this court is left with no other option than to proceed in the matter after hearing the submissions of the learned counsel for the appellant and after peruse of the records.

4.It is seen that the complainant presented the cheque for collection and that the same was returned as unpaid on 05.07.2000. Exs. P4 and P5 are the return memos issued by the concerned banks. The complainant issued the statutory notice dated 08.07.2000 (Ex.P6), calling upon the accused to pay the cheque amount. The accused had received notice on 11.07.2000.

The Acknowledgement card sent by the accused has been marked as Ex.P7. There was no response by the accused. Since the accused did not pay the cheque amount within the period of 15 days from the receipt of the statutory notice, the complainant filed C.C.No.169 of 2000 before Judicial Magistrate No.-II, Cheyyar. The complainant examined himself as PW1 and the bank officials as PW2 and PW3. Exhibits P1 to P7 were marked. Ex.P1 is the complaint cheque. On the side of the accused, a police official Mr.Kothandam, who is said to have conducted an enquiry in this regard was examined as DW1. No documents were marked on the side of the accused. The trial court held that the complaint cheque was presented within the period of statutory validity. But then it came to the conclusion that the statutory presumption raised in terms of Section 139 of the Negotiable Instrument Act stood rebutted by the evidence of PW1 himself. PW1 in his deposition stated that there was no transaction between him and the accused after 1998. On the strength of this solitary sentence, the entire judgment of acquittal rests.

5.The learned counsel for the appellant would contend that the approach of the trial magistrate is totally perverse. In the memo of grounds also it has been pleaded that a slip of tongue in giving oral evidence cannot be used to render a verdict of acquittal. This court is in agreement with the said submission. It is obvious from a reading of the evidence that there was monthly transaction between the complainant and the accused. The accused did not dispute the signature, date, amount and name of the drawee, bearing in the complainant cheque. In fact, he did not even bother to issue a reply notice. He also did not enter into the witness box. Of course, it is not incumbent or absolutely necessary for the accused to enter the witness box. Of course, a duty is cast on him to rebut the presumption that is raised under Section 139 of the Negotiable Instrument Act.

6.In this case, this court holds that this presumption has not at all been rebutted by the accused. The court below could not have used a single line in the deposition of the complainant to hold that the said presumption stood rebutted. A proper reading of the deposition of the complainant indicates that there was monetary transaction between the complainant and the accused in the year 1998 and that there was no other transaction from the year 1999 onwards. What should be read as 1999 had been typed as 1998. This solitary slip of tongue is the basis for acquitting the accused. If that be so, there is no explanation as to how the complaint cheque came to be possessed by the complainant.

7.For all these reasons, the judgment dated 07.02.2005 made in C.C.No.169 of 2000 on the file of Judicial Magistrate No.-II, Cheyyar, stands set aside.

8. Since the judgment of the court below is perverse, the matter is remitted to the file of the court below. This Court refrains from pronouncing on the guilty of the accused because that must be followed by a sentence. Since the accused is not represented before me, I am remitting the matter to the court below. The court below shall cause service on the accused and conclude the entire proceedings within a period of two months from the date of receipt of a copy of this Judgment. The court below shall hear the matter after completion of service on the accused and dispose of the matter on merits and in accordance with law. This Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

may

To

1. Judicial Magistrate No.II, Cheyyar.

2. - do - The Chief Judicial Magistrate, Tiruvannamalai

3. The Section Officer, Criminal Section, High Court, Madras.

4. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.M.P.Jayaprakash, Advocate, S.R.No.40299

Crl. Appeal No. 131 of 2006

KJI (CO)
SSM(28/02/2019)

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