

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 13.04.2018]

[Pronounced on : 24.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.A.No.281 of 2008

R.Kandasamy Appellant/Complainant
... Vs ...
S.Sivakumar Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records and set aside the judgment of acquittal in S.T.C.No.830 of 2007 dated 23.01.2008 passed by the learned Judicial Magistrate, Rasipuram, Namakkal District.

For Appellant : Mr.R.Ganesh Kumar
For Respondent : Mr.S.Sivakumar,
Party-in-person-No appearance

JUDGMENT

The complainant is the appellant herein.

2. The private complaint has been filed by the appellant herein against the respondent in S.T.C.No.830 of 2007 on the file of the learned Judicial Magistrate, Rasipuram, Namakkal District under Section 138 of Negotiable Instruments Act.

3. The case of the petitioner is that, the respondent herein has borrowed for a sum of Rs.1,00,000/- and return for the same, he has given 4 postal cheques and however, on deposit, a same was returned as insufficient funds and hence, after issuing the formalities, he has presented the private complaint and taken on file as S.T.C.No.830 of 2007.

4. To substantiate the complaint, he has examined himself as P.W.1 and also examined as P.W.2, Duraisamy marked as Exhibits P1 to P7 and defendant marked as Exhibit D1.

5. After hearing both sides, the learned Judicial Magistrate taking note of the admission made by the P.W.1 in the cross-examination that he has given the money for the purpose of

obtaining carriage bus permit which is also duly corroborated by the evidence of P.W.2 in his cross examination and accordingly, by relying upon the decision reported in 2004(3) C.T.C Page 579 and 2007(2) MLJ Cr1.1684 to the effect that though, there is a presumption however the presumption under Section 139 of Negotiable Instruments Act is reputable one.

6. On the evidence available on record, the trial Magistrate has come to the conclusion that in view of the admission in the cross examination of P.Ws.1 and 2 that what was the amount given by the complainant to the accused is for the purpose of obtaining carriage bus permit as illegal money and consequently, the trial Court has come to the conclusion that it is not legal enforceable debt and accordingly, dismissed the petition. Aggrieved against the said order of acquittal, the private complaint has preferred the appeal.

7. The learned counsel for the petitioner would submit that since the signature is admitted, the trial Court ought to have held that respondent is liable to pay the amount. In view of the specific finding by the trial Court that there is no legally enforceable debt which is found based upon the admission made by the parties in the cross-examination and the cheque-in-issue was not issued in the manner has averred in the complaint and in the absence of anything to suggest that it is for legally enforceable pre-existing debt and hence, the trial Court has quiet right in accepting the case of the defence and ordering acquittal is well found and well merited does not warrant interference at this stage and accordingly, this Criminal Appeal has devoid of merits and same is hereby rejected.

8. In the result, this Criminal Appeal is dismissed and the order passed by the learned Judicial Magistrate, Rasipuram, Namakkal District in S.T.C.No.830 of 2007 dated 23.01.2008 is hereby confirmed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

The Judicial Magistrate, Rasipuram, Namakkal District.

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GMR(CO)
SP(09/08/2018)