

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 09.04.2018]
[PRONOUNCED ON : 09.08.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.Nos.316 and 317 of 2007

Abdul Hameed
S/o. Zackariya
Represented by Krishnan,
(Power of Attorney)

... Appellant in both
Crl.As./Complainant

... Vs ...

Jayaperumal

... Respondent in both
Crl.As./Accused

Prayer in both Crl.As.: Criminal Appeals filed under Section 378 of Cr.P.C., against the judgment of the learned IV Additional Sessions Judge, Chennai, in Crl.A.Nos.268 and 267 of 2003 respectively by common judgment dated 1.4.2004 acquitting the accused/appellant under Section 138 of the Negotiable Instruments Act, by setting aside the conviction and sentence passed by the learned X Metropolitan Magistrate, Egmore, Chennai, in C.C.Nos.10755 and 10754 of 2000 respectively by common judgment dated 07.08.2003 convicting the accused under Section 138 of the Negotiable Instruments Act and sentencing him to undergo six months simple imprisonment and to pay a sum of Rs.3,00,000/- and Rs.10,00,000/- respectively as compensation.

In both Crl.As.

For Appellant
in both Crl.As. : Mr.T.R.Ravi

For Respondent in
Crl.A.No.316/2007 : Mr.R.Kamesh Kumar
Legal Aid Counsel
(No Appearance)

For Respondent in
Crl.A.No.317/2007 : Mr.P.Ragavan
Legal Aid Counsel

COMMON JUDGMENT

Appeals against acquittal. The complainant is the appellant. Two private complaints have been filed by one Mr.Krishnan, Power of Attorney Holder of Abdul Hameed alleging that the respondent herein/accused, who is the Proprietor of Senkadu Exports and Imports, in the Month of April approached the complainant/appellant herein for financial assistance and borrowed a sum of Rs.10,00,000/- and Rs.3,00,000/- and to discharge the said liability, the accused had issued two cheques bearing Nos.293908 and 293910 dated 05.04.2000 drawn on Vijaya Bank Ltd., Mount Road Branch, Chennai, and when the said cheques were presented by the complainant to his Bankers viz., Union Bank of India, Egmore Branch, Chennai, on 16.04.2000 and on 25.04.2000 and again on 14.06.2000, the same were dishonoured on 17.06.2000 with an endorsement "Insufficient funds" and therefore, the complainant issued a legal notice on 27.06.2000 for payment of the cheque amount. The accused had received the said notice on 04.07.2000, but failed to make payment and hence, the two private complaints were filed by the complainant and the same were taken on file by the learned X Metropolitan Magistrate, Egmore, Chennai, in C.C.Nos.10754 and 10755 of 2000 and framed charge against the accused under Section 138 of the Negotiable Instruments Act.

2. Before the trial Court, on the side of the complainant in both the cases, three witnesses were examined as P.Ws.1 to 3 and on the side of the complainant in C.C.No.10754 of 2000, eight documents were marked as Exs.P.1 to P.8 and on the side of the complainant in C.C.No.10755 of 2000, eight documents were marked as Exs.P.1 to P.8. On the side of the accused in both the cases, five witnesses were examined as D.Ws.1 to 5 and no exhibits were marked in both the cases.

3. On consideration of both oral and documentary evidence, the trial Court found the accused guilty under Section 138 of the Negotiable Instruments Act in both the cases and sentenced the accused to undergo six months simple imprisonment for each cases and to pay a sum of Rs.10,00,000/- in C.C.No.10754 of 2000 and Rs.3,00,000/- in C.C.No.10755 of 2000 as compensation.

4. Aggrieved against the said judgment of conviction and sentence passed by the learned X Metropolitan Magistrate, Egmore, Chennai, the accused had preferred two Criminal Appeals in CrI.A.Nos.268 and 267 of 2003 respectively before the learned IV Additional Sessions Judge, Chennai. On re-appreciation of evidence, the learned IV Additional Sessions Judge has allowed both the criminal appeals and consequently, acquitted the accused and hence, the above two criminal appeals have been

filed by the complainant before this Court.

5. Mr.T.R.Ravi, learned counsel appearing for the appellant/complainant in both the cases would contend that in the absence of date of borrowal and non-production of the alleged pro-note and also in the absence of any plea regarding the nature of the transaction, the Lower Appellate Court ought not to have dismissed the complaints. It is further contended that in the absence of any reply notice sent by the respondent herein/accused, the Lower Appellate Court ought not to have interfered with the judgment of the trial Court in convicting the accused and hence, prayed for setting aside the order passed by the Lower Appellate Court in acquitting the accused.

6. Mr.P.Ragavan, learned Legal Aid Counsel appearing for the respondent in Crl.A.No.317 of 2007 made submissions in support of the judgment of the Lower Appellate Court.

7. After hearing both the parties and also perusing the records, it appears that before the trial Court, it is the specific case of the complainant/appellant herein that the respondent herein/accused had borrowed a sum of Rs.3,00,000/- and Rs.10,00,000/- and executed two cheques and the complaints have been preferred through Power of Attorney Holder Mr.Krishnan, who was examined himself as P.W.1 and marked Exs.P.1 to P.8. On the contrary, the suggestive case of the defence is that the respondent/accused did not know the complainant and he only knew the Power of Attorney Holder of the complainant. The Power of Attorney Holder of the complainant was introduced by D.W.5-Chitrarasu and the Power of Attorney Holder, who was examined as P.W.1, promised to arrange finance through his partner in Srilanga and requested the accused to give two cheques for Rs.10,00,000/- and Rs.3,00,000/- in order to show them to arrange funds and the respondent/accused believed the words of the complainant in entirety and issued the cheques but he did not borrow any money either from P.W.1/Power of Attorney Holder or from D.W.3, who is the Principal of P.W.1.

8. During the course of examination of P.W.1, it is specifically suggested that Ex.P.7-letter was executed by the respondent/accused out of fear and coercion in the police station. The trial Court has disbelieved the case of the respondent/accused and laid the conviction. However, the Lower Appellate Court for the reasons recorded therein accepted the case of the respondent/accused and acquitted the accused by allowing the criminal appeals.

9. It is seen from the records that the Power of Attorney Holder was examined as P.W.1 and the cheques in both the cases were marked as Exs.P.2 and Ex.P.7 in both the cases was

projected as if it is a letter given by the accused to P.W.1 accepting his liability. On the contrary, the accused examined himself as D.W.1 and also examined the complainant viz., Principal of P.W.1 as D.W.3 and also examined one Palanivel as D.W.4 and Chitrarasu as D.W.5. In Ex.P.7, the alleged letter written and given by the accused to P.W.1 in the police station, D.W.2 and D.W.4 have signed as witnesses. After perusing the evidence of P.W.1, admittedly, P.W.1 has not deposed regarding the date of borrowal by the accused and the alleged pro-note said to have been executed by the accused were not produced and even in his evidence, he only deposed that in the Month of April 2000, a sum of Rs.10,00,000/- and Rs.3,00,000/- has been given as debt to the accused. The date of transaction is very essential in the matter of this nature. On going through the evidence of D.W.1 and the specific case as spoken to by him, as narrated above, it remains to be stated that D.W.2 and D.W.4 have spoken regarding the fact what was transpired in the police station while the respondent/accused was apprehended by the Mylapore police and only at Mylapore police station, at the instance of the police, the accused had executed Ex.P.7-Letter and it has been specifically deposed that in Ex.P.7, D.W.2 and D.W.4 have attested as witnesses.

10. In view of the specific evidence of D.Ws.2 and 4 coupled with the non-production of the alleged pro-note said to have been executed by the accused and also to the effect that Ex.P.7 came into existence only on 17.02.2001 much after filing of the present complaints and taking into entirety of the circumstances, the Lower Appellate Court has rightly come to a conclusion that Ex.P.7 does not advance the case of the complainant and disbelieved the evidence of complainant and rightly disregarded the document Ex.P.7.

11. The next limb case of the respondent/accused is that he never knew the complainant and he only knew the Power of Attorney Holder of the complainant namely P.W.1 and to substantiate the same, he had examined the complainant viz., the Principal of P.W.1, who had categorically deposed that he never knew the accused and only P.W.1, the Power of Attorney Holder of the complainant was introduced by D.W.5 and P.W.1 promised to arrange finance through his partner now is in Srilanka and also supported the case of the accused assumes significance.

12. In view of the specific case suggested by the respondent/accused, in fine, D.W.3, who is the Principal of P.W.1, the alleged Power of Attorney Holder of the complainant himself has supported the case of the respondent that no money has been changed hands from D.W.3 to D.W.1 and hence, the Lower Appellate Court has rightly come to a conclusion that in view of the specific finding about Ex.P.7 as stated supra coupled with

the oral evidence of D.W.3, disbelieved the case of the appellant/complainant and the same does not warrant any interference in this appeals.

13. Learned Legal Aid counsel appearing for the respondent in Crl.A.No.317 of 2007 also drawn my attention to the specific admission of D.W.3 in the evidence that the complainant/D.W.3 has obtained the cheques from the respondent/accused only as a surety and there was no transaction of money between D.W.3/complainant and the respondent/accused.

14. In the above factual ground as culled out from the evidence of D.Ws.1, 2, 3 and 4 and taking note of the fact that D.W.3 is none other than the complainant, who is the Principal of the Power of Attorney Holder/P.W.1, the Lower Appellate Court has rightly appreciated the evidence and correctly came to the conclusion that in the absence of specific averments in the complaint regarding the date of borrowal and discrepancy in the evidence of P.W.1 and D.W.3 viz., between the Power of Attorney Holder and his Principal and in view of the supporting evidence of D.Ws.2, 4 and 5, who have clearly supported the suggestive case of the respondent/accused and failure on the part of the complainant to produce the material documents such as pro-note alleged to have been executed by the accused, loan agreement and the relevant documents, the trial Court has clearly held that the suggestive case has been probabalised.

15. On the contrary, the complainant has failed to prove the legally enforceable pre-existing debt in support of the cheque in issue and accordingly, rejected the case of the complainant and the same cannot be found fault with and in view of the specific evidence of D.W.3 and the probablized evidence of D.Ws.2 and 4 and coupled with the want of material evidence as pointed out in the preceding paragraphs, the finding rendered by the Lower Appellate Court cannot be found fault with and as the same is well considered and well merited does not warrant any interference by this Court. Accordingly, both the criminal appeals are devoid of merits and the same are liable to be dismissed.

16. In the result, both the Criminal Appeals are dismissed by confirming the order passed by the learned IV Additional Sessions Judge, Chennai, in Crl.A.Nos.268 and 267 of 2003 respectively dated 01.04.2004, acquitting the accused/appellant under Section 138 of the Negotiable Instruments Act.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The IV Additional Sessions Judge,
Chennai.

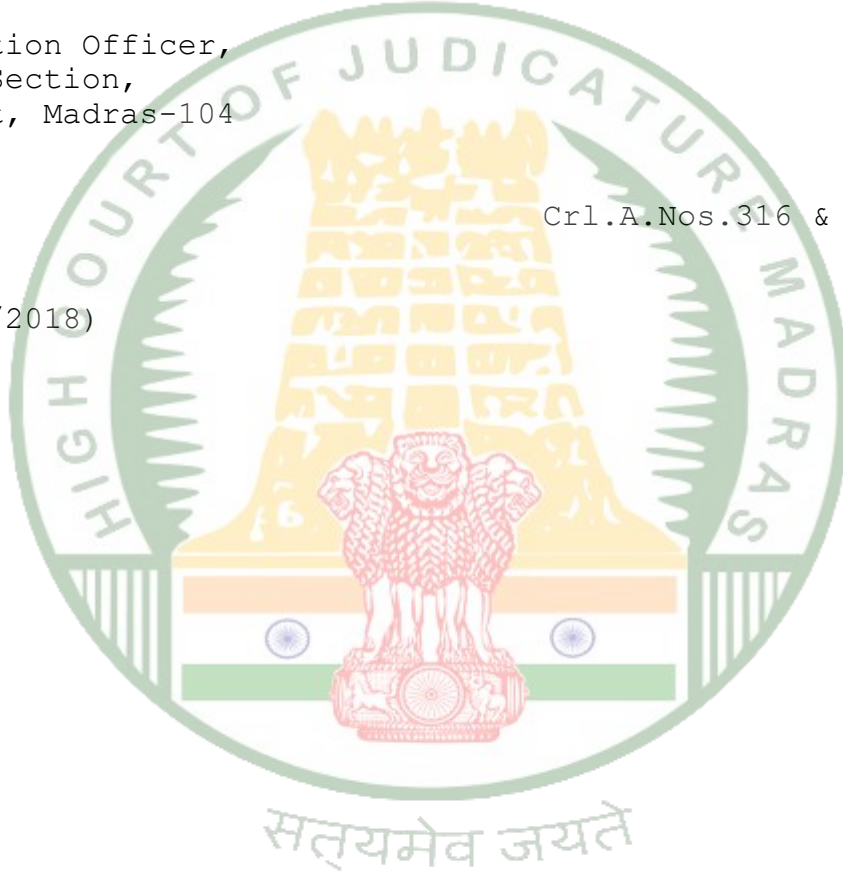
2.The Chief Metropolitan,
Magistrate, Egmore,
Chennai

3. The X Metropolitan Magistrate,
Egmore, Chennai.

4.The Section Officer,
Criminal Section,
High Court, Madras-104

Crl.A.Nos.316 & 317 of 2007

PS (CO)
GSP (27/08/2018)



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