IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.07.2018
DELIVERED ON : 02.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.No.340 of 2007

A.Dhanasekaran ... Appellant/Complainant

Vs.

P.S.Shivakumar ... Respondent/Accused

Prayer: Criminal Appeal filed under Sections 378 of Cr.P.C, against the order of acquittal dated 16.02.2007 made in C.C.No.238 of 2002 on the file of the Judicial Magistrate No.I, Gobichettipalayam.

For Appellant : Mr.R.Marudhachalamoorthy
For Respondent : Mr.P.Kavirinaden for Mr.N.Manoharan

JUDGMENT

This appeal is directed as against the order of acquittal dated 16.02.2007 made in C.C.No.238 of 2002 on the file of the Judicial Magistrate No.I, Gobichettaipalayam.

2. The case of the appellant/complainant is that the respondent borrowed a sum of Rs.1,50,000/- from him on 10.02.2002. The respondent/accused issued a post dated cheque dated 10.02.2002 towards discharge the said amount. Further on 28.02.2002 again the respondent/accused borrowed another sum of Rs.2,00,000/- and issued another post dated cheque dated 28.02.2002 towards discharge of the said sum. On instructions when these cheques were presented for collection before the Indian Overseas Bank, Modachre Branch. They were returned for the reason that the payment stopped by the respondent/accused, by letter dated 05.08.2002. Therefore, the appellant/complainant filed the complaint to punish the accused under Section 138 of Negotiable Instruments Act.

3. The learned Judicial Magistrate, Coimbatore after taking cognizance against the accused in C.C.No.238 of 2002 and after furnishing the copies to the accused, since the accused pleaded not guilty, examined witnesses P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.8. After closure of the evidence on both sides, the incriminating evidence as against the accused, were put to him

for questioning under Section 313 of Cr.P.C. The accused denied the same as "false" however, in order to prove his case, he did not examine any witness and mark any documents. The trial Court after considering the evidence and materials available on record, acquitted the accused for the offence under Section 138 of Negotiable Instruments Act. Aggrieved by the said judgment of acquittal, the present appeal has been filed by the appellant/complainant.

4. The learned Magistrate acquitted the accused for the reasons that the accused is stranger to the complainant, and there was no need for him to borrow any amount. Further, statutory notice sent to the wrong address and as such not fulfilled the requirements under Section 138 Sub-Clause-1 (b) of Negotiable Instruments Act. Further once the accused rebutted the issuance of cheque, the burden, is shifted to the shoulder of the complainant and the complainant failed to prove the case beyond any reasonable doubts.

5. The learned counsel for the appellant would submit that the notice was sent to the proper address. But the accused cleverly returned the same so as to make it appear as in sufficient service. Once the issuance of cheque and the signature in cheque are accepted, it is presumed that the cheque has been issued only towards legally enforceable debt and the accused is liable to be prosecuted. The accused issued cheque with clear intention to cheat the appellant/complainant, since the cheque belongs to one M/s.T.S.Subramaniyam & sons Company and it was signed by the accused and issued. Therefore, the complainant proved his case and sought for conviction of the respondent.

6. The learned counsel for the respondent would submit that the accused never served any statutory notice as required under the provision of the Negotiable Instruments Act. Further, there is absolutely no relationship between the complainant and the accused and he had never seen him before and he did not know about the complainant. Therefore, there is absolutely no need for him to borrow any amount from the complainant. Further, he would submit that without obtaining any documents for the borrowal of Rs.3,50,000/- is not at all possible from any person. In his cross examination, P.W.1 has categorically admitted that except the cheques, no other documents were obtained at the time of alleged borrowal of loan. It is also to be noted that admittedly at the time of borrowal itself, the cheques were obtained by the complainant. Therefore, he prayed for confirmation of the order passed by the learned Magistrate.

7. Heard the learned counsel for the appellant Mr.R.Marudhachalamoorthy and the counsel for the respondent Mr.P.Kavirinaden and perused the materials available on record

as well as the judgment passed by the trial Court.

8. The case of the complainant is that the respondent borrowed money on two occasions and issued two post dated cheques towards repayment of the debt. On his instructions, the cheques were presented for collection and the same were returned for the reason that the accused issued a letter to "stop payment" on the said cheques. After causing legal notice, the complainant filed a complaint against the respondent/accused for the offence under Section 138 of Negotiable Instruments Act. The alleged cheques Ex.P.1 and Ex.P2 are not belonging to the accused. Admittedly, they belong to one T.S.Subramaniam and Sons Company and there is no connection between the accused and the said Company. The complainant failed to prove the relationship between the accused and the said Company. In fact, P.W.3 the Manager of the Karur Vysya Bank Ltd., Perundurai deposed that the alleged cheque Ex.P.1 and Ex.P2 issued from the Account No.336 and the said account stands in the name of T.S. Subramaniam & Sons Company and it is a partnership firm. Further, the said account was freezed by the Income Tax Department and on receipt of letter to stop payment, the said cheques were returned. He has further, deposed that the said Company consisting of the partners, namely Mr.P.S.Chellakumarasamy and P.S.Subramaniam. Therefore, it is proved that the alleged cheques Ex.P.1 and Exp.2 are not belonging to the account of the accused. Therefore, the complainant failed to prove his case.

9. P.W.1 deposed and admitted that Ex.P.1 and Ex.P.2 cheques issued from the account of T.S.Subramaniyam & Sons Company and admittedly he did not examine any partners of the said Company to prove their relationship between the accused as his witness. Further, he admitted that he does not know about the relationship between the accused and the said Company. The specific case of the complainant is that the accused is no way connected with the cheques Ex.P.1 and Ex.P.2 and he cheated him. The case of the accused is that he never issued any cheques and he had no legal enforceable debt to issue cheques in favour of the complainant. Therefore, once the accused rebutted the presumption under Section 138 of Negotiable Instruments Act, the complainant is liable to prove his case. The complainant failed to prove his case. Since, the cheques were returned on the request for stop payment and the said stop payment was not issued by the accused.

10. It is seen from the evidence of P.W.3 the account in which the alleged cheques Ex.P.1 and Ex.P.2 issued was already freezed by the Income Tax Department. Therefore, the complainant did not prove the case as alleged by him. Further, the statutory notice Ex.P.4 was admittedly returned without

serving on the accused. It is seen from the notice that the amount mentioned as 2,50,000/-, whereas the total cheque amount is 3,50,000/-. That apart, the said notice was returned for the reason "no proper address, no door number and no street name". Therefore, the statutory notice was not at all sent to the proper address. It cannot be taken as the requirements under Section 138 (b) of Negotiable Instruments Act are complied with. When the requirement of statutory notice is not complied with the complaint itself is not maintainable, since it has no cause of action to maintain the complaint. Therefore, the case of the complainant is not believable one.

11. In view of the above discussion, this Court is of the considered opinion that the complainant did not fulfil the requirements under Section 138 of Negotiable Instruments Act. Therefore, the trial Court after considering the entire evidence and facts and circumstances of the case, has rightly acquitted the accused and the judgment passed by the Judicial Magistrate No.I, Gobichettipalayam does not warrant any interference from this Court and accordingly, this Criminal Appeal is liable to be dismissed.

12. In fine, this Criminal Appeal is dismissed and the judgment of acquittal dated 16.02.2007 made in C.C.No.238 of 2002 on the file of the Judicial Magistrate No.I, Gobichettaipalayam is here by confirmed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

dss

To
1. The Judicial Magistrate No.I,
Gobichettipalayam.

2. Do thro The Chief Judicial Magistrate,
Erode.

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.No.53086
+1cc to Mr.N.Manokaran, Advocate SR.No.53026

Crl.A.No.340 of 2007

CP(CO)
GN(21/08/2018)