

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.No.684 of 2010

S.P.Jaswanth Kumar

...

Appellant/Complainant

Vs.

T.Murthy

...

Respondent/Accused

Prayer:

Criminal Appeal filed under Section 378 of Cr.P.C., against the judgment dated 28.10.2009 passed in C.A.No.5 of 2009 on the file of Sessions Judge of the Nilgiris at Udhagamandalam reversal in Trial Court judgment dated 28.01.2009 made in S.T.C.No.706 of 2006 on the file of the Judicial Magistrate, Kothagiri and prays that this Court may be pleased to set aside the judgment of acquittal passed under Section 255(1) Cr.P.C. and convict the accused for the offence under Section 138 of N.I. Act.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.C.Ramkumar

JUDGMENT

This criminal appeal is preferred by the appellant/complainant against the order passed in C.A.No.5 of 2009 dated 28.10.2009 by the learned Sessions Judge of the Nilgiris at Udhagamandalam, wherein the learned lower appellate Court reversed the judgment of conviction and sentence passed by the learned trial Court in its judgment dated 28.1.2009 made in S.T.C.No.706 of 2006 on the file of the learned Judicial Magistrate, Kothagiri.

2.Brief case of the appellant/complainant:

The facts of the case is that the accused /respondent have borrowed a sum of Rs.1,50,000/- from the appellant/complainant and issued a cheque bearing No.003160 dated 16.12.2003 drawn on Kotagiri Co-Operative Urban Bank Limited, Kotagiri branch. The appellant/complainant presented the cheque for collection

through his banker viz, Indian Overseas Bank, Kotagiri branch on 16.12.2003 due to insufficient of funds. After receipt of information from bank on 31.12.2003 the appellant/complainant issued a statutory legal notice to the accused/respondent. The notice was returned as unclaimed on 10.1.2004. Thereafter the appellant/complainant filed the complaint under section 138 of Negotiable Instruments Act.

3. During the trial, the appellant/complainant examined PWs-1 and 2 and marked Exhibits-P1 to P5 and no witness was examined on the side of the accused/respondent.

4. After the trial, on appreciating the material available on record, the learned trial Court convicted the respondent/accused and sentenced him to undergo simple imprisonment for period of one year for the offences under section 138 of the Negotiable Instruments Act and awarded the compensation for the cheque amount.

5. Aggrieved over the same, the respondent/accused preferred criminal appeal in C.A.No.5 of 2009 before the learned Sessions Judge of the Nilgiris at Udhmandalam, wherein the learned lower appellate Court reversed the finding of the trial judge and acquitted the respondent/accused. Aggrieved over the same, this criminal appeal is filed.

6. The learned counsel for the appellant/complainant submits that the Court below ought to have seen that the complaint filed by the appellant at the first instance was well within the period of limitation. It was filed long before 25.2.2004. The notice was returned unclaimed on 10.1.2004. The complaint was filed on 16.2.2004.

7. The learned counsel for the appellant/complainant submits that the Court below ought to have seen that the delay in representation should not be taken into consideration at all. The Court should not have returned the complaint for defects. The finding of the lower appellate Court on the point of delay of 1½ years in representing the complaint as fatal is not in accordance with the well established principle of law.

8. The learned counsel for the appellant/complainant submits that the Court below ought to have seen that the second complaint presented by the complainant through the power of

attorney agent is nothing but the continuation of the first complaint. It can be said that it is nothing but an amendment of the cause title. It is to be seen that the complainant is the same in both the complaints. The cognizance taken on this complaint by the trial Court is to be taken as order of cognizance taken on the original complaint.

9.The learned counsel for the appellant/complainant submits that the Court below ought to have seen that in this case the accused has filed memo thereby agreeing to settle the amount. In that case, failure to pay the amount of cheque would prove the case of the complainant.

10.The learned counsel appearing for the respondent supported the findings of the lower appellate Court and sought for dismissal of the appeal.

11.I heard Mr.K.V.Sridharan, learned counsel for the appellant and Mr.C.Ramkumar, learned counsel for the respondent and perused the entire materials available on record.

12.In the case on hand, the learned lower appellate Court failed to appreciate the fact that the complaint was well within period of limitation and the delay in representation should not be taken into consideration. Therefore I am inclined interfere in the order passed by the learned lower appellate Court:

(1). The learned counsel for the petitioner would submit that the first complaint was returned by various remarks and the complaint filed through power agent which was preferred on 25.8.2006. Therefore, the Court below dismissed the complaint and only it was time barred.

(2). It is seen from the records that the first complaint has filed on 16.2.2004 and the same is pending before the Court below with regard to various remarks. As per the second complaint is the very same cause of action. Therefore, the criminal appeal is dismissed.

(3). Considering the facts and circumstances of the case, the learned Judicial Magistrate, Kotagiri, is directed to consider the first complaint dated 16.2.2004 and to pass appropriate orders.

13.Accordingly, this criminal appeal is dismissed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

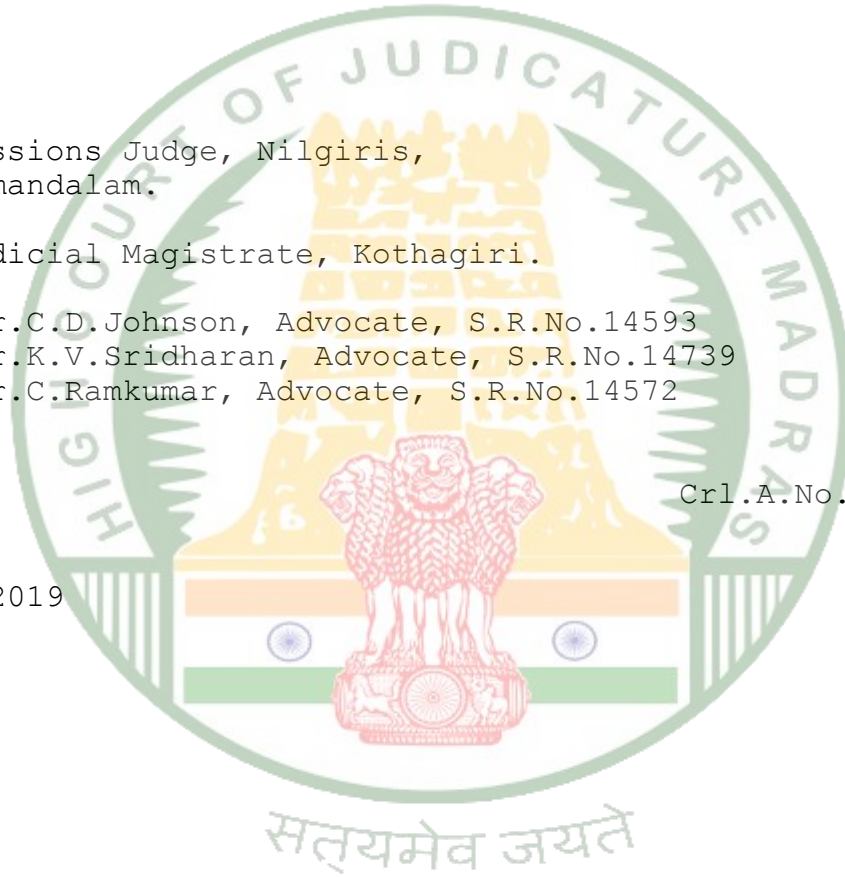
To

1. The Sessions Judge, Nilgiris,  
Udhagamandalam.
2. The Judicial Magistrate, Kothagiri.

+1cc to Mr.C.D.Johnson, Advocate, S.R.No.14593  
+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.14739  
+1cc to Mr.C.Ramkumar, Advocate, S.R.No.14572

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CS/13/03/2019



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