IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.06.2018

Pronounced on : 10.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.461 of 2008

P.S.K. Finance and Chit Funds Limited,
Rep. by its Managing Director,
T.K.Kuppusamy,
Rep. by his Power of Attorney-holder
and Manager, M.Ramasamy,
No.395, Bazaar Street,
Salem - 1. ... Appellant/Complainant

Vs.

1.B.Umar Ali,
S/o. Basheer Ahmed.

2.Babu,
S/o. Basheer Ahmed.

3.Hajira,
W/o. Babu. ... Respondents/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 06.12.2007 in C.C.No.668 of 2004 on the file of the Judicial Magistrate No.1, Salem.

For Petitioner : No appearance

For Respondents : No appearance

J U D G M E N T

This Criminal Appeal is filed to set aside the order of acquittal dated 06.12.2007 in C.C.No.668 of 2004 on the file of the Judicial Magistrate No.1, Salem.

2.The appellant, who is a Finance and Chit funds Corporation had filed this appeal against the judgment of acquittal dated 06-12-2007 in C.C.No.668 of 2004 rendered by the learned Judicial Magistrate No.1, Salem against the respondents herein in a case filed under Section 138 of Negotiable Instruments Act.

3.This case was taken up on special sitting, Saturday i.e. on 23-06-2018, prior to which advance list has been printed and circulated in the cause list for a period of two weeks. On the day of special sitting when the case was called up, both petitioners and respondent had not appeared. It is a case of the year 2008, pending for more than 10 years, without any progress. This appeal is against the order of judgment of acquittal rendered by the learned Judicial Magistrate No.1, Salem in C.C.No.668 of 2004 dated 06-12-2007. Hence, on perusal of the records, this court proposes to take up the appeal and dispose the same on merits.

4.The appellant has filed the above appeal against the judgment of acquittal against three respondents. The contention of the appellant is that a sum of Rs.1,85,000/- (Rupees one lakh eighty five thousand only) was borrowed by one Govindasamy and the respondents herein has given the cheque for due repayment. As the said Govindasamy had not paid the said amount. The 1st respondent on behalf of all the respondents had issued a cheque for Rs.1,85,000/- (Rupees one lakh eighty five thousand only) dated 02-02-2004 and when the cheque was presented the same was dishonored, Statutory Notice was issued. The 1st and 2nd respondent refused to receive the same and the 3rd respondent received the notice and thus, complying with the statutory requirements, a case has been filed before the lower Court.

5.The lower Court failed to look into the fact that the respondents had not produced any evidence to rebut the presumption under Sections 118 and 139 of Negotiable Instruments Act. Further, the finding of the trial Court that there is irregularity in the Power of Attorney given to PW1 by the Managing Director of the Appellant company, since the Managing Director, who had given the power his name does not find place in the resolution and that person had died before the Board resolution was passed. The reasoning of the trial Court in rejecting the Ex.P2, Power of Attorney dated 20-12-2004 is correct for the reason that the Power of Attorney Ex.P2 is dated 20-12-2004, which was shown to be issued by one T.K.Kuppusamy, Managing Director of the complainant company. The resolution for issuance of Power of Attorney is Ex.P1 which is dated 15-12-2004. The complainant had admitted that the said Kuppusamy name is not in the Board resolution, Ex.P1 and the said person had passed away when the Board has passed the resolution. In such circumstances, the Power of Attorney cannot be looked into and acted upon. The reason given by the trial Court for rejecting the Power of Attorney is correct.

6.Further, the complainant being a Chit and Finance Company, the complainant admits that the said Govindasamy, who had availed the loan had executed a pronote and other documents, which the complainant had failed to produce. This would affect the case of the complainant, more so, when the complainant is into Chit and Finance business, ought to have maintain records and documents.

7.Further, no reason has been given by the complainant why respondents 1 to 3 had given guarantee for the loan of Govindasamy and no such guarantee letter has been produced. The complainant admits that Kuppusamy, Managing Director died and thereafter, it was one Sivakumar, who had taken over as Managing Director and hence, Ex.P2, Power of Attorney said to have been given by Kuppusamy is invalid. The complainant had not produced any evidence both oral and documentary to show that any role has been played in the alleged transaction by A2 and A3. In view of implicating A2 and A3 and not producing any documents for the loan transaction by a Chit and Finance company had made the trial Court to come to a conclusion that the appellant had not proved the case against the respondents. On the other hand, the respondents by cogent and plausible explanation had probabilised their case.

8.This Court having taken into consideration the principles laid down in the cases of appeal against acquittal and on perusal of the materials and the trial Court Judgment, which is in appeal finds that there is no perversity or illegality in the finding of the trial Court.

9.Hence, the Criminal Appeal is dismissed. The Judgment of acquittal dated 06.12.2007 in C.C.No.668 of 2004 passed by the learned Judicial Magistrate No.1, Salem is confirmed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.1,
   Salem.

2. The Section Officer,
   Criminal Section, High Court,
   Chennai-104.

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CS/24/07/18