

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.464 of 2008

P.S.K. Finance and Chit Funds corporation,
Rep. by its Partner,
M.Ramasamy,
No.395, Bazaar Street,
Salem - 1. ... Appellant/Complainant

Vs.

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

2.Babu,
S/o. Basheer Ahmed.

... Respondents/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the order of acquittal dated 04.12.2007 in C.C.No.639 of 2004 on the file of the Judicial Magistrate Court 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 04.12.2007 in C.C.No.639 of 2004 on the file of the Judicial Magistrate Court No.1, Salem.

2.The appellant, who is a Finance and Chit funds Corporation had filed this appeal against the judgment of acquittal dated 04-12-2007 in C.C.No.639 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.639 of 2004 dated 04-12-2007. Hence, on perusal of the records, this court proposes to take up the appeal and dispose the same on merits.

4.The contention of the appellant is that the judgment of acquittal passed by the trial court is not sustainable. As it could be seen from the records that the appellant had marked the certified copy of the Partnership deed, the dishonored cheque, legal notice and the Returned postal cover and all the statutory compliance have been complied with and the case has been filed. On the contrary, the respondents had not produced any evidence to revert the statutory presumption Under Sections 118 and 139 of the Negotiable Instruments Act. The finding of the lower Court is that the appellant did not produced any documents to show that the amount lend to the accused, when the cheque signed by the appellant is admitted, the finding is contrary to law. The statutory notice was issued under the instructions of Managing Director and the complaint was filed by the appellant as Partner and finding irregularity of the same by the trial Court is not sustainable.

5.The trial court had given a well reasoned and cogent reasoning while rendering a judgment of acquittal. The appellant claiming it to be a finance company has not produced any documents of loan transaction between the appellant and the respondents and it had not given any reason why the 2nd respondent has been made as an accused. In the absence of the 2nd respondent not a signatory to the cheque. Further, there is no documents produced to show that the 2nd respondent had any role in the issuance of the cheque Ex.P2 dated 12-02-2004 for Rs.19,500/-. Further no oral evidence was also let in. The categorical assertion by the complainant is that for the business of plantain leaf the 1st respondent on 05-03-2002 had availed a loan of Rs.30,000/- by executing pronote and of which for the balance to be paid the cheque for Rs.19,500/- Ex.P.2 has been issued.

6.Further, the complainant is not certain whether the complainant is a company or a Partnership firm. In the statutory notice, it could be seen that it has been issued on the instructions of the Managing Director of the company and the complaint has been filed by the Manager of the complainant firm which is a Partnership firm which has been reiterated by complainant/appellant in the complaint as well as in his evidence. In his evidence he states that the complaint has been filed in the capacity as Partner. Further, the lower Court

giving a finding that since the appellant is a chit fund and finance company, which ought to have produced the statement of accounts has failed to produce any such account to substantiate and prove their case. On the other hand, implicating the 2nd respondent as an accused, without any reason or ration would only prove that it is a motivated complaint and hence, the trial court giving cogent, convincing reason had rendered a judgment of acquittal.

7.This court having taken into consideration the principles laid down in case 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.

8.Hence, the Criminal Appeal is dismissed. The Judgment of acquittal dated 04.12.2007 in C.C.No.639 of 2004 passed by the learned Judicial Magistrate No.1, Salem is confirmed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ah

To

1.The Judicial Magistrate No.1,
Salem.

2.Do-Through The Chief Judicial Magistrate,
Salem.

3.The Public Prosecutor,
High Court, Madras.

WEB COPY

CrI.A.No.464 of 2008

EV(CO)
BM 24/07/2018