

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal Nos.504 and 505 of 2007

C.L.Pichamani @ Swarnna Latha ... Appellants in both the
Crl.A.s/Complainant

Vs

V.Sathish ... Respondent in both the
Crl.A.s/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the acquittal order dated 02.05.2007 passed in C.C.Nos.631 and 632 of 2006 by the learned Judicial Magistrate No.2, Coimbatore and prays that this Court may be pleased to set aside the same.

(In both the Crl.A.s)
For Appellant : Mr.L.Mouli

JUDGMENT

These criminal appeals were preferred by the appellant/complainant against the order of acquittal passed by the learned Judicial Magistrate No.2, Coimbatore in C.C.Nos.631 and 632 of 2006 dated 02.05.2007.

2.Brief case of the appellant/complainant in both cases.

The case of the appellant is that the respondent borrowed a sum of Rs.31,000/- and Rs.30,000/- on 28.2.2006 agreeing to repay the same within a period of one month and issued a post-date cheques on 28.2.2006 drawn Centurion Bank, Avinashi Branch. The appellant/complainant presented the both impugned cheques for collection through his Banker City Union Bank, Ramnagar, Coimbatore Branch on 31.3.2006 and 1.3.2006. Both the cheques were returned with endorsement "Funds Insufficient". On 6.4.2006 the appellant issued a statutory legal notice to the respondent for the impugned cheque of Rs.31,000/- and the same was

acknowledged by respondent on 7.4.2006. Second statutory notice was issued for the cheque amount of Rs.30,000/- on 14.3.2006 and the same was acknowledged by the respondent on 24.3.2006. The respondent /accused issued reply on 25.3.2006 denying the case. Hence the appellant/complainant filed cases before the learned Judicial Magistrate No.2, Coimbatore under section 138 of Negotiable Instrument Act in C.C.No.631 of 2006 and 632 of 2006.

3.During trial the appellant/complainant examined as PW1 and Exhibits P1 to P4 were marked in C.C.No.631 of 2006 and Exhibits P1 to P5 were marked in C.C.No.632 of 2006. In both the cases the respondent/accused marked Exhibit B1 receipt and no evidence was examined on his side.

4.After trial, the learned judicial Magistrate acquitted the respondent/accused in both the cases holding that the appellant /complainant failed in proving his claim as per Negotiable Instrument Act. Aggrieved over the same, the appellant/complainant preferred this criminal appeal.

5.The learned counsel for the appellant submits that the Lower Court erred in acquitting the respondent on the ground that the respondent has no liability to discharge the amount to the petitioner, but Exhibit B1 proves that the respondent has liability to pay the amount to the appellant.

6.The learned counsel for the appellant submits that the Lower Court erred in acquitting the respondent since the respondent issued cheques to the appellant as security for the amount.

7.The learned counsel for the appellant submits that the Lower Court failed to see that Exhibit B1 produced by respondent shows that the respondent issued the cheques to the appellant discharge the liability.

8.The learned counsel for the appellant submits that the Lower Court failed to see that the appellant has issued Exhibit B2 to the respondent to show that she had bonafide claim.

9.The learned counsel for the respondent supported the findings of the learned trial judge and sought for dismissal of the appeal.

10.I heard Mr.L.Mouli, learned counsel for the appellant in both the appeals. I have carefully examined the evidence of the appellant and the exhibits marked on both sides. The respondent/accused admitted the signatures found in the impugned cheques.

11.It is seen from the evidence of the appellant that the impugned cheques were issued by the respondent in the police station and to that effect the receipt was issued by the appellant. On perusal of the receipt exhibit P1 it is seen that the complainant admitted the fact that the cheques were issued by the respondent on the loan amount borrowed by his brother. Further the 1st statutory legal notice issued by the appellant/complainant did not disclose the issuance of second cheque for Rs.30,000/- by the respondent/complainant. Hence the loan amount was not given to the respondent/accused and the same was proved through the cross examination PW1.

12.I am of the view that the learned trial Court rightly dismissed the complaint filed by the appellant and no interference is warranted in this appeal to disturb the finding of the learned Judicial Magistrate in C.C.No.631 of 2006 and 632 of 2006.

13.In the result, these Criminal Appeals filed by the appellant are dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Judicial Magistrate No.2, Coimbatore.

Copy to
The Section Officer, Criminal Section, High Court, Chennai-104.

+2cc to Mr.L.Mouli, Advocate Sr.20562

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sj[co]
srg 29/01/2019