



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2018
DELIVERED ON : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No. 97 of 2010

P.Subramani ... Appellant/Complainant

Vs

C.J.Greeton ... Respondent/Accused

Appeal filed under Section 378(4) of the Code of Criminal Procedure, to set aside the acquittal against the respondent/accused in C.C.No.1104 of 2007 dated 23.11.2009 by the learned Judicial Magistrate No.III, Coimbatore and convict the respondent.

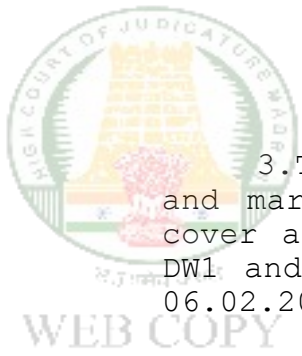
For Appellant : Mr.P.Saravanan

For Respondent : Mr.D.Ramesh Rai

JUDGMENT

The Appellant filed this Criminal Appeal against the Order of Acquittal of the Respondent / Accused under Section 138 of Negotiable Instruments Act, 1881 made in C.C.No.1104 of 2007 on the file of Judicial Magistrate No.3, Coimbatore dated 23.11.2009.

2.The Appellant filed the Complaint in C.C.No.1104 of 2007 alleging that the Respondent / Accused borrowed a sum of Rs.95,000/- by executing a Promissory Note on 06.02.2006 and again in discharge of the said loan, the Respondent issued the impugned cheque dated 10.01.2007 for Rs.95,000/-. When the Appellant presented the said cheque for encashment on 02.02.2007 through Central Bank of India, on account of insufficient finds, the cheque was returned. On 28.02.2007, the appellant issued mandatory legal notice and the respondent refused to receive the notice and returned the same on 12.03.2007. Hence, the appellant had filed a complaint under Section 138 of the Negotiable Instruments Act, (hereinafter referred to as the NI Act) before the learned Judicial Magistrate No.3, Coimbatore. On receipt of summons, the respondent appeared and denied the accusation against him.



3.To prove the case, the Appellant examined himself as PW1 and marked the cheque, return memo, legal notice and returned cover as Exhibits P1 to P4. On the side of the Respondent, the DW1 and DW2 were examined and marked the Promissory Note dated 06.02.2006 as Exhibit D1.

4.After appreciating the evidence, both oral and documentary, the trial Court held that the Respondent found not guilty and acquitted him. Impugning the same, the Appellant/Complainant preferred the present appeal.

5.The contentions in the grounds of appeal as well as the submissions of the learned counsel appearing for the appellant are that, the trial Court's acquittal judgment is contrary to law, weight of evidence and probabilities of the case; that the trial Court failed to appreciate the fact that legal notice was served as contemplated under the Act; that the trial Court failed to see that the legally enforced debt would reference to the nature of debt or liability and not the person against to whom the debt or liability can be enforced; that the trial Court failed to see that the initial burden lies on the respondent to prove non existence of consideration ; that the trial Court taken the advertisement published in the news paper and one Nagaraj who was a partner of the appellant lodged a private complaint in C.C.No.163 of 2007 and the same was challenged by way of filing quash petition in CrI.O.P.No.1691 of 2008 and this Court was pleased to grant stay on 3.4.2008 which disprove the appreciation of the trial Court against the appellant; that the trial Court failed to see the legal propositions led by the Apex Court in the judgments reported in 2008 (8) SCR page 1210 and AIR 2009 SC page 1284 and the appellant has locus standi to file the complaint.

6.Per contra, the learned counsel for the respondent contended that the trial Court after analyzing the evidence let in by both sides, arrived at a conclusion that the impugned cheque was not issued for repayment of the loan amount alleged to have been received by the respondent. Further the appellant wife namely Dhanalakshmi is a Building Contractor connected with SBM Constructions and the respondent and some others obtained loan from the Bank for constructing the houses with the said Dhanalakshmi and for security the cheque was issued, which was now misused by the appellant by foisting a false case. Therefore, there was no truth that the appellant had advanced a sum of Rs.95,000/- to the respondent and the learned counsel prayed for dismissal of the appeal.

7.Now the points that arise for consideration is whether the learned trial Court is right in acquitting the accused under Section 138 of the N.I. Act?



8. On perusal of case records, it is seen from the evidence of PW1 that the pro-note was executed by the respondent in favour of the SBM Builders represented through partners Subramani and Dhanalakshmi and not on the sole name of Subramani, the appellant herein. No documents have been filed by the appellant to corroborate the fact that he is a partner of the SBM Builders. Further the complaint was initiated independently by the appellant and the promissory note filed by the respondent as Exhibit-D1 discloses that the pro-note was executed not to the appellant but in favour of SBM Builders. As per Exhibit D1, it is to be seen that whether the appellant has the locus standi in initiating the complaint against the respondent. Admittedly the Exhibit D1 reflects the name of the SBM Builders but the Exhibit P1 reflects the name of the appellant. Hence it cannot be construed that the cheque was issued in discharge of the debt under promissory note as alleged in the complaint. Further the appellant ought to have examined his wife Dhanalakshmi for proving the consideration under the promissory note Exhibit-D1. But the appellant neither failed to examine any witness nor filed the documents supporting his case. The appellant in his evidence admitted that Exhibit-D1 was returned by his son and another one person signed as attestor. Both were not examined by the appellant to prove the passing of consideration of Rs.95,000/-. Further the legal notice was not sent to the correct address of the respondent as noted in the Exhibit-D1.

9. On a perusal of the order impugned in this appeal, this Court finds that the trial Court has elaborately dealt with the said aspect and held that the Appellant ought to have sent the notice to the address of the respondent contained in Exhibit D1 and therefore, the objection of the accused that no proper notice was sent to the accused is sustained. Since the said finding of the trial Court was based on the evidence, this Court don't want to elaborate upon the same and it is to be held that the trial Court had rightly rejected passing of consideration in favour of the appellant.

10. It is seen from the records that there was an agreement between the SBM Constructions and alleged transaction as stated in the complaint cannot be believed. If really, the appellant had given Rs.95, 000/- to the respondent as loan, the appellant would have taken steps to realise the amount. In the case on hand, absolutely, there was no material to show that the complainant had taken steps to prove the passing of consideration.



11. For all the above, trial Court had rightly arrived at the conclusion and thus for this Court with reference to the settled propositions in the factual matrix there is nothing to interfere with the trial Court's acquittal judgment, but for dismissal of the appeal by confirming it.

12. In the result, this Criminal Appeal is dismissed, by confirming the order of acquittal recorded by the trial Court in its judgment supported by reasons in its not finding the accused guilty for the offence under Section 138 of the Negotiable Instruments Act.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Judicial Magistrate No.III,
Coimbatore.
- 2) - do - through The Chief Judicial Magistrate,
Coimbatore.

+1 cc to Mr.D.Ramesh Rai, Advocate, S.R.No.79669

Criminal Appeal No.97 of 2010

SSM(04/01/2019)