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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
CRL.A.No.62 of 2008

A.Rajeshkumar .. Appellant/Complainant

Vs.

J.Ravichandran .. Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 11.09.2007 made in C.C.No.378 of 2006 on the file of the learned Judicial Magistrate No.III, Erode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.J.Ravichandran (No Appearance)

JUDGMENT

The present appeal has been filed challenging the order passed by the learned Judicial Magistrate No.III, Erode in C.C.No.378 of 2006 dated 11.09.2007 whereby which the respondent herein was acquitted from charges under Sections 138, 141 and 142 of the Negotiable Instruments Act.

2.I heard Mr.N.Manokaran, learned counsel for the appellant and none appeared for the respondent.

3.The short facts leading to the filing of the complaint under Sections 138, 141 and 142 of the Negotiable Instruments Act by the appellant herein is that the respondent happens to be a person well known to him and he has lent a sum of Rs.74,795/- to the respondent on 01.11.2005. On the same day itself, in order to discharge the liability, the respondent seems to have given three post dated cheques to the appellant as follows:

(a) Cheque No.183029 drawn on IDBI Bank dated 21.11.2005 for a sum of Rs.47,795/-.

(b) Cheque No.243811 drawn on IDBI Bank dated 29.04.2006 for a sum of Rs.14,000/-.

(c) Cheque No.234812 drawn on IDBI Bank dated 15.06.2006 for a sum of Rs.13,000/-.



4. Accordingly the said cheques were presented on 16.05.2006, 13.05.2006 and 15.05.2006 respectively and those were returned on 18.05.2006, 15.05.2006 and 17.05.2006 with a Bank endorsement as "funds insufficient".

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5. Hence, a legal notice was issued on 16.06.2006 to the accused informing about the said dishonour of the cheques and directing him to repay the amount within 15 days from the date of receipt of the legal notice. The accused received the legal notice on 27.06.2006 and did not send any reply and accordingly the appellant filed a complaint on 11.08.2006.

6. The lower Court while analyzing the complaint has taken note of one fact that for the cheque issued for Rs.14,000/- bearing No.234811, the dishonour admittedly took place on 15.05.2006 but however, the advocate's notice was sent only on 16.06.2006 which is after the 30 days period as prescribed under Section 138(b) of the Negotiable Instruments Act. On this ground, the Court held that the Notice was defective and hence, the said Notice which also, within its purview, included two other cheques bearing Cheque Nos.183029 and 234812 is also deemed to be defective and accordingly held, the complaint cannot stand and rejected the case of the appellant despite that two other cheques having been presented well within the time and notices were also issued within the period of limitation.

7. Hence, the short question that arises in the present matter is whether if a combined notice for dishonour of cheques presented on different dates is maintainable and if for one of the cheques alone, the notice was defective, does it mean that the entire notice would get vitiated even if it is otherwise valid.

8. It is quite well settled by a long line of decisions that the purport of issuing a notice is to provide an opportunity to the accused to make payments expeditiously in order to avoid Criminal prosecution. The 30 day period which has been prescribed under the Act is for the individual cases of dishonour of cheques and it cannot be a case where every cheque is painted with the same brush. If the dishonour of a particular cheque has occurred and the notice has been sent beyond the 30 days period, what would get affected is the said individual cheque and not the other cheques if they are also covered as part of the same notice provided that the notices are within the 30 days period.

9. Hence, the finding of the lower Court that all the cheques would get vitiated by virtue of a defective notice in so far as one cheque is concerned cannot be held to be valid.



10.The learned counsel for the petitioner also placed reliance upon the decisions of the Hon'ble Supreme Court in *Sadanandan Bhadran v. Madhavan Sunil Kumar* reported in (1998) 6 SCC 514 and *C.C.Alavi Haji v. Palapetty Muhammed & Anr.* reported in 2007 (2) MWN (Cr.) DCC 100 (SC) to canvass his case.

11.It has been made clear in the above two decisions and also in several other decisions that the purpose of Section 138 is to assist the person who has suffered by virtue of dishonour of a cheque and to ensure that under the threat of prosecution, the accused is compelled to settle the payments at once. If at all, there is any technical infirmity in the procedure adopted by the complainant, the same shall affect the complainant only to a limited extent and it cannot demolish his very claim. The reason being, if there are two views possible, one in the favour of the complainant and other against, the Courts, after ensuring that the complainant has discharged his initial burden, the Court would come to his rescue and not prejudice his interest.

12.In this case, even if the notice in respect of one cheque bearing No.234811 has been sent after the 30 days period, in so far as the other two cheques are concerned, they cannot be held to be invalid. Hence, to this extent, the finding of the lower Court cannot withstand the rigor of law and accordingly, the same deserves to be set aside.

13.For the foregoing reasons, this Criminal Appeal is allowed on the following terms:

The respondent shall pay a sum of Rs.60,795/- with simple interest at the rate of 12% per annum till the date of payment within a period of 15 days from the date of receipt of a copy of this order, failing which he shall be sentenced to simple imprisonment for a period of one year.

vs

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.III, Erode.

+1cc to Mr.N.Manokaran, Advocate Sr.no.30985

SSV(CO)

sm:15.5.2018

judgment made in
Crl.A.No.62 of 2008