

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 09.04.2018	Date of Pronouncing Judgment 14.08.2018
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN
Crl.A.No.699 of 2008

M/S.Sri Sasi Financiers,
a Partnership Firm represented by,
its Authorised Power Agent
S.K.Aravindakshan ... Appellant/Complainant

Vs.

Manimozhi ... Respondent/Accused

Prayer: Criminal Appeal is filed under Section 378 of Criminal Procedure Code, against the order of acquittal dated 08.07.2008 made in C.A.No.29 of 2008 on the file of Additional District & Sessions Court, Coimbatore/Fast Track Court No.2 Coimbatore reversing judgment of conviction dated 09.01.2008 made in STC No.1071 of 2005, on the file of Judicial Magistrate No.7, Coimbatore.

For Appellant : Mr.P.Saravana Sowmiyan

For Respondent : Mr.P.Elango

J U D G M E N T

This is an appeal against acquittal.

2. For the sake of convenience, parties are entered as per the ranking before the trial Court. Private complainant/appellant preferred the private complaint in STC No.1071/2005 before the Judicial Magistrate No.7, Coimbatore under Section 138 of Negotiable Instruments Act and the same was allowed. Aggrieved against the order of conviction, the respondent herein preferred criminal appeal before the Additional District & Sessions Court, Coimbatore in C.A.No.29/2008 and the same was allowed. Consequently, the complaint was dismissed and the respondent was

acquitted and hence the appeal.

3. The private complaint before the Judicial Magistrate in STC No.1071/2005 is based on the averment that on 01.09.2004, the respondent had borrowed Rs.6,00,000/- from the private complainant/ Chit Fund and as a part performance of the repayment of the said amount, the respondent has given a cheque for Rs.3,00,000/- on 09.02.2015 and another one cheque for Rs.1,50,000/- dated 09.02.2015. On deposit, the same was dishonoured and after observing the formalities, private complaint was taken on file as S.C.No.1071/2005. On behalf of the private complainant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked.

4. On consideration of oral and documentary evidence, the learned Judicial Magistrate came to the conclusion that the private complainant is entitled for presumption under Section 139 of the Negotiable Instruments Act and accordingly laid the conviction and sentence. Aggrieved against the said order, the respondent has preferred an appeal and the same was allowed.

5. The learned counsel for the petitioner would contend that the lower Court has failed to note that under the Negotiable Instruments Act, the cheque has been issued for legally enforceable debt and the lower Court has erred in drawing adverse interference against the appellant for non producing the Books of account. Hence, he prayed for setting aside the order.

6. The learned counsel appearing for the respondent made a submission in support of the order of the lower Court. The point for consideration is whether the order of the lower Court is sustainable in law. The private complainant/appellant has come forward with the specific case that on 01.09.2004, the respondent has borrowed Rs.6,00,000/- and agreed to pay interest at the rate of Rs.2.50%. On 09.02.2005, she gave the cheque in question and another cheque on 18.02.2015 and the same was dishonoured and hence the complaint.

7. The case of the respondent is that she never knew the complainant chit fund company and only her husband take some chit amount and duly paid the chit amount and for the balance of the amount, case is pending in STC No.1071/2005. Further, stated that for the drawing of the above said chit amount of her husband, he has given pro note to the complainant chit fund and the same has been misused, since the cheques are given as a security for the purpose of the chit amount drawn by her husband (P.W.1). It is to be

stated that P.W.1 power agent of the private complainant, he had categorically admitted that originally for the amount borrowed from the private complainant, the respondent had executed the pro note and for the amount due on that pro note, this cheque in issue has been issued as a part payment.

8. However, in view of the specific denial by the respondent, P.W.1 has admitted that he is only the power agent and he is not aware of the alleged transaction between the private complainant/appellant and the respondent herein. He has further stated that he is ready to produce pro note to the respondent herein to show there was a pre existing legally enforceable debt for the cheque amount. However, he has not filed the above said pro note as per his undertaking and hence, the lower Court has rightly drawn an adverse inference against the appellant herein and same cannot be found fault with as the same is in accordance with law Section 114 (g) of Indian Evidence Act.

9. Furthermore, P.W.1 has admitted in the cross-examination that for the lending amount of Rs.6,00,000/- which is yet to be given by the respondent to the appellant, there was a corresponding entry in the account ledger and he has undertaken to produce the same. However, no such document has been produced by the appellant and the trial Court has correctly drawn the adverse inference against the appellant herein. Yet another point is that though P.W.1, in cross-examination, has admitted that Rs.6,00,000/- given to the respondent was duly required for the purpose of filing I.T., return for the corresponding year and he has undertaken to produce the same but failed to do so.

10. Taking into consideration the entirety of the facts and circumstances of the case, the trial Court came to the conclusion that the respondent herein has successfully demonstrated in the cross-examination of P.W.1 that there is no prior legally enforceable debt as alleged by the complainant. Hence, in view of the discrepancy and also in view of the admission of P.W.1 in the cross-examination regarding his alleged prior transaction between the parties, the lower appellate Court has correctly come to the conclusion that there is no pre existing legally enforceable debt and set aside the conviction laid by the trial Court and acquitted the respondent is well founded on the facts and circumstances and evidence on record.

11. In the result, this criminal appeal is dismissed. The order of acquittal passed in C.A.No.29/2008 reversing

the order of conviction made in STC.No.1071/2005 on the file of Judicial Magistrate No.7 coimbatore is hereby confirmed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

AT
To
The Judicial Magistrate No.7,
Coimbatore

2.Do thro The Chief Judicial Magistrate
Coimbatore

3.The Additional District & Sessions Judge,
Fast Track Court 2, Coimbatore

4.Do Thro The Principal Sessions Judge,
Coimbatore

copy to :
The section officer
Criminal section ,
High court
Madras

Order in

Cr1.A.No.699 of 2008

ASK(17/09/2018)

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