IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :23.06.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.A.No.646 of 2007

M. Ravichandran ... Appellant/Complainant

Vs .

C. Manivasagan ... Respondent/Accused

Prayer : The Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure to set aside the Judgment dated 22.06.2005 of the Judicial Magistrate, Tambaram in C.C.No.310 of 2003 acquitting the accused u/s.248(1) of Cr.P.C.,

For Appellant : Mr.N.Santhosh for Mr.Veerapandi

For Respondent : No appearance

JUDGMENT

This appeal has been filed by the complainant against the Judgment of acquittal passed by the learned Judicial Magistrate, Tambaram in C.C.No.310 of 2003 dated 22.06.2005.

2. The appellant herein has filed a complaint stating that in view of the liquidating debt, the respondent herein has issued a cheque dated 21.02.2003 for Rs.50,000/- in favour of the complainant. He has presented the said cheque in the bank for encashment on 24.02.2003. The said cheque was returned on 06.03.2003 with a bank memo dated 04.03.2003 as "account closed". Thereafter on 21.03.2003, the appellant has sent a statutory notice calling upon the respondent to pay the cheque amount within fifteen days from the date of receipt of the said notice. The respondent received the said notice and sent a reply notice dated 07.04.2003 with false averments. However, he did not make any payment. Hence, the appellant has filed a complaint to punish the respondent u/s.138 of the Negotiable Instruments Act. For the sake of convenience, the parties are referred to as described before the trial court.

3. Based on the said complaint, the learned Judicial Magistrate has taken the case on file in C.C.No.310 of 2003 and issued summons to the accused. On appearance of the accused, copies were furnished and thereafter, the accused was questioned with regard to the offence said to have been committed by him. The accused denied the same and pleaded not guilty. Thereafter, the learned Judicial Magistrate has tried the case. During trial, on the side of the complainant, the complainant examined himself as PW1 and also examined the Bank Manager as PW2. He also marked Ex.P1 to Ex.P6 as exhibits.

4. The evidence on the side of the complainant in brief is as follows:

PW1 Ravichandran (complainant) is doing business in construction materials. The accused borrowed a sum of Rs.50,000/- and with a view to discharge the said debt, he has issued a cheque for Rs.50000/- dated 21.02.2003. The said cheque has been marked as Ex.P1. He has presented the said cheque in the bank on 21.02.2003 for encashment. The said cheque was returned with the bank memo dated 04.03.2003 as "account closed". The bank memo has been marked as Ex.P2. Thereafter, he has issued a statutory notice. A copy of the said notice has been marked as Ex.P3. The accused has received the said notice on 25.03.2003. The postal acknowledgment has been marked as Ex.P4. Thereafter, the accused did not make any payment. Hence, he filed a complaint to punish the accused u/s.138 of the Negotiable Instruments Act.

5. PW2 Palani has stated in his evidence that he was working as Manager in the State Bank of India, Kattumannar Kovil Branch. In the said bank, the accused has maintained an account. He further stated that Ex.P1 cheque was issued by his bank to the accused and the said cheque came to his bank for encashment on 04.03.2003. He further stated that since the accused's account was closed on 29.04.2002, the said cheque was returned with Ex.P2 bank memo as "account closed". He has produced a copy of the accused's bank account and also a copy of the cheques return book and marked as Ex.P5 and Ex.P6 respectively.

6. The evidence on the side of the complainant was closed with PW2 and thereafter the accused was questioned u/s.313 of Cr.P.C., With regard to the incriminating circumstances found in the evidence of the PW1 and PW2. The accused has denied them as false and stated that he does not know the complainant and he has not received any amount from the complainant. He further stated that the said case is a false case and also stated that he is having evidence on his side.

7. The accused examined one Sivakumar as DW1 and one Sethuraman as DW2 and examined himself as DW3. He has marked

Exs.D1 to D15 as exhibits on his side.

8. The accused closed his side evidence with DW3 and thereafter, the learned Judicial Magistrate, after hearing both sides considering the materials placed before him acquitted the accused by his judgment dated 22.06.2005. Feeling aggrieved, the complainant has preferred this appeal.

9. Today when this matter came up for hearing, no representation on behalf of the respondent/accused. Hence, after hearing Mr.N.Santhosh, the learned counsel for the appellant/complainant and perusing the records, Judgment is being passed.

10. The Points for consideration are as follows:
(i) Whether the learned Judicial Magistrate was right in acquitting the accused?
(ii) Whether this appeal has to be allowed?

11. Point Nos.1 and 2:
The learned counsel for the appellant/complainant has submitted that the respondent/accused borrowed a sum of Rs.50,000/- from the complainant and only with a view to discharge the said debt, he has issued Ex.P1 cheque. He further submitted that the complainant has presented the cheque in the bank on 24.02.2003 and the same was returned as "account closed" and thereafter the complainant has sent a statutory notice calling upon the accused to make payment within fifteen days from the date of receipt of a copy of the said notice. He further submitted that the accused after receiving the notice in respect of making payment has sent reply notice with false averments and hence, the complainant was constrained to file a complaint to punish the accused u/s.138 of the Negotiable Instruments Act. He further submitted that during trial, the complainant examined himself as PW1 and thereafter, he examined the bank Manager as PW2. He further submitted that the bank Manager (PW2) deposed that on 29.04.2002 itself the accused account was closed and only thereafter the complainant came to know that the accused after closing his bank account issued Ex.P1 cheque on 21.02.2003 with an intention to cheat the complainant. He further submitted that the learned Judicial Magistrate has failed to appreciate the evidence in proper perspective and he has acquitted the accused and hence, he requests to set aside the said Judgment and conviction of the accused u/s.138 of the Negotiable Instruments Act.

12. The case of the complainant is that in view of liquidating debt, the accused has issued Ex.P1 cheque dated 21.02.2003 for Rs.50,000/-. The evidence of PW2 (bank managers) would show that the accused's account was closed on 29.04.2002

itself. Ex.P5 also would show that the accused's account was closed on 29.04.2002 itself. So it is clear that only after closing the bank account, the Ex.P1 cheque was issued. At this juncture, it would be relevant to refer to Section 138 of the Negotiable Instruments Act which read as follows: :

> "Section 138 in The Negotiable Instruments Act, 1881:
> 138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:
> Provided that nothing contained in this section shall apply unless—
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
> (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.
> Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

13. From the reading of the aforesaid provision, it is clear that where any cheque drawn by a person on an account maintained by him with banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank

unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arrayed to be paid from that account of an agreement made with the bank, such person shall be deemed to have committed an offence.

14. In this case, on the date of issuance of the cehque, the accused has not maintained any account in the bank. Even before the issuance of cheque, his account was closed. Therefore, this court is of the view that the learned Judicial Magistrate has rightly acquitted the accused for the offence u/s.138 of the Negotiable Instruments Act.

15. In the result, Criminal Appeal is dismissed. It is open to the complainant, to prosecute the accused, if he feels that the accused has committed offence under any other provisions of law.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

gv

To

The Judicial Magistrate,
Tambaram

+1cc to Mr.P.R.Thiruneelakandan, Advocate SR.No.40050
+1cc to Mr.K.P.Aantha Krishna, Advocate SR.No.40312

CRL.A.No.646 of 2007

NMI(CO)
GN(18/07/2018)