

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.542 of 2016

A. Manivel, ...Appellant/Complainant

Vs.

1. Sinthiya Maloni ...Respondent/Accused

2. The State Rep by
Public Prosecutor,
Erode District.

(R2 deleted vide order dated 27.04.2016 made in
Crl.O.P.No.9545/2016 in Crl.A.No.SR17632/2016)

This Criminal Appeal filed under Section 378 Code of Criminal Procedure to set aside judgement dated 05.02.2016 passed in C.A.No. 93/2015 on the file of the IInd Additional District Sessions Court, Erode reversing the judgement dated 07.07.2015 passed in S.T.C.No.287/2012 on the file of the Judicial Magistrate, Fast Track Court No.II, Erode.

For Petitioner: Mr.I.C.Vasudevan

For Respondent: Ms. R. Shase for Mr.M. Guru Prasad

JUDGMENT

This criminal appeal has been filed against order of acquittal dated 05.02.2016 made in C.A.No. 93/2015 by the learned IInd Additional District Sessions Court, Erode.

2 Complainant is appellant in the present criminal appeal. The case of the appellant is that the respondent had borrowed a sum of Rs.2,75,000/- for her urgent family needs. When the appellant insisted for repayment of the same, she issued a cheque for a sum of Rs.2,75,000/- in favour of the appellant drawn in DENA Bank, bearing cheque No.925116 dated 24.01.2012. When the said cheque was presented for collection on 06.02.2012, it was returned with an endorsement "insufficient funds". Despite several reminders for payment, the respondent did not come forward to make any payment and hence the appellant

issued a legal notice on 15.02.2012 and the same was received by the respondent on 16.02.2012. Instead of paying the debt, the respondent sent a reply on 28.02.2012 denying very borrowal of money. The appellant again sent a notice on 21.03.2012, which was received by the respondent on 22.03.2012. Despite receipt of the said notice, the respondent neither repaid the amount nor given any reply to the notice. Therefore, the appellant filed a private complaint under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate, Fast Track Court II, Erode, which was taken on file in S.T.C.No.287 of 2012.

3 The respondent denied the allegations made against her by stating that she had not issued any cheque to the appellant and had not borrowed any loan from him as stated in the complaint. The said cheque was issued only for security purpose for the loan borrowed from one Devaraj. The appellant misused the cheque given by the respondent to the said Devaraj. Hence the respondent prayed for rejection of the complaint preferred by the appellant.

4 Before the trial Court, the appellant examined himself as P.W.1 and marked documents Ex.P1 to P9. The respondent examined herself as R.W.1 and no document was marked.

5 After hearing the arguments advanced on either side, the trial court found the respondent guilty of offence under Section 138 of Negotiable Instruments Act, 1881, has convicted the respondent by judgment dated 07.07.2015 and sentenced to undergo 1 year imprisonment with fine of Rs.5,000/-, in default, 1 month simple imprisonment. Aggrieved against which, the respondent preferred an appeal before the IInd Additional Sessions Judge, Erode in C.A.No.93 of 2015. The lower appellate Court, after hearing both sides, being a fact finding Court re-appreciated entire evidences and the materials, allowed the appeal by judgment dated 05.02.2016, wherein, the judgement dated 07.07.2015 of the trial Court was reversed and acquitted the respondent.

6 Aggrieved against the said judgment dated 05.02.2016 made in C.A.No.93 of 2015, the complainant has come forward with the present criminal appeal.

7 The learned counsel for the appellant/ complainant would submit that the respondent had not denied the signature found in the cheque and she admitted issuance of cheque. The trial Court has rightly observed that when the respondent admitted the signature, she has to prove the fact, how the cheque had been in the hands of the appellant and in the absence of any proof for the above, the denial of the respondent cannot

be accepted. Further the respondent did not explain as to why she has not collected the cheques, which were said to have been given to one Devaraj for security purpose, after re-paying the amount borrowed from him and the respondent made contradictory statements in the complaint and in cross examination. The appellant believing the respondent and her husband, lent money without obtaining any pro-note except the alleged cheque. The lower appellate Court failed to consider the above facts and acquitted the respondent by observing preponderance of probabilities are against the appellant.

8 The learned counsel for the respondent/accused would submit that the appellant, in his examination, before the trial Court, has stated that he did not know the name of the husband of the accused. Further in the complaint he stated that he lent money to the respondent, per contra, in his cross examination, he has stated that he lent money to the husband of the respondent. At one part of cross examination, he stated except to the respondent, he did not lend money to any one, whereas, in another part of cross examination, he admitted that he lent money to eight other persons and cheques bouncing cases are pending, like these the appellant made contradictory statements. The appellant failed to explain the fact as to why he did not collect any document from the husband of the accused, to whom he lent money and the appellant has also failed to prove his lending capacity. The lower appellate Court had elaborately gone into these facts and rightly acquitted the respondent, which does not warrant any interference of this Court.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 On a perusal of the records it reveal that the appellant lent a sum of Rs.2,75,000/- to the respondent for her urgent family needs. Since after several demands for re-payment of the same and after sending legal notice, the respondent did not come forward to re-pay the money, had filed a private complaint before the learned Magistrate and the learned Magistrate after elaborate trial, convicted the respondent, against which the respondent preferred appeal. The lower appellate Court after re-appreciating entire evidences, reversed the judgment of the trial Court dated 07.07.2015 and acquitted the respondent by judgment dated 05.02.2016.

11 The appellant in his examination before the trial Court has stated that he did not know even name of the husband of the accused and in the complaint he stated that he lent money to the respondent, whereas, in cross examination he stated that he lent money to the husband of the respondent. At one part of cross

examination, he stated except to the respondent, he did not lend money to any one, whereas, in another part of cross examination, he admitted that he lent money to several persons and cheques bouncing cases are pending. The appellant has nowhere stated that the respondent came along with her husband and received the money, only at the time of cross examination he stated so. It was stated that the appellant is working in a mechanic shop, which is run by one Sathish at monthly rent of Rs.600/- and the appellant earning a sum of Rs.7000/- p.m. That being the fact, the appellant did not explain the lending capacity.

12 This Court is of the view that the appellant failed to prove that he lent money to the respondent and there is legally enforceable debt. Hence this Court does not find any valid reason to interfere with the judgment dated 05.02.2016 made by the lower appellate Court.

13 In the result, the criminal appeal is dismissed and judgment dated 05.02.2016 made by the lower appellate Court is hereby confirmed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The IIInd Additional District Sessions Court,
Erode.

2. The Judicial Magistrate,
Fast Track Court II, Erode.

+1cc to M/S.I.C.Vasudevan, Advocate Sr.56515
+1cc to Mr.M.Guruprasad, Advocate Sr.57080

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srg 12/11/2018