

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.04.2018

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.697 of 2007

R.M.Vijayakumar
Rep. by Power of Attorney
Power Agent
N.R.D.Ramkumar ...Appellant/Complainant

S.Prabhakaran ..Respondent/Accused

Criminal Appeal filed under section 378 of the Code of Criminal Procedure Code to set aside the order dated 22.02.2007 in C.C.No.63 of 2005 on the file of the Judicial Magistrate No.I, coimbatore.

For Petitioner : Mr.C.R.Prasanan
For Respondent : No appearance

J U D G E M E N T

On 26.08.2014, the appellant R.Vijayakumar has filed a private complaint through the power of attorney N.R.D.Ramkumar in Judicial Magistrate No.I Coimbatore, against the respondent, for the offence punishable u/s.138 NI Act.

2.Subsequent to the filing of the private complaint, during the time of trial, the power holder N.R.D.Ramkumar was examined as P.W.1 and marked six documents as Exs.1 to 6. As per the case of the appellant, on 10.06.2003, the present respondent had availed a loan of Rs.1,00,000/- (One lakh), on promising to repay the same with 24% interest and executed a pronote, which was marked as Ex.P1. In order to repay the said loan, he issued a cheque for the same amount drawn in a Canara Bank. Subsequent to that, the cheque was returned on 10.07.2004, by mentioning the reason that "account closed". Further, the written memo and the debit advice issued by the Bank were marked as Exs.B3 and B4. Subsequent to the return of the cheque, the present appellant issued an Advocate Notice on 05.08.2004 and the same was received by the respondent on 07.08.2004, the copy of the Advocate notice and the acknowledgment signed by the respondent was marked as Exs.B5 and B6. Even after receiving the Advocate

Notice , due to the nonpayment of the loan availed by the respondent, the complaint has been filed under the provisions of 138 Negotiable Instruments Act.

3.After taking cognizance, the power holder N.R.D.Ramkumar was examined as P.W.1 and after closing the petition as side evidence, on the side of the respondent , none was examined. Thereafter, the trial court came to the conclusion that the respondent is not committed any offence u/s.138 of Negotiable Instruments Act. Against which the present Criminal Appeal was filed by the complainant. In order to substantiate the claim, the learned counsel appearing for the appellant would submit that in the trial court, the learned Magistrate dismissed the complaint on the following grounds:

i.The power of attorney issued in favour of N.R.D.Ramkumar was not marked as exhibit.

ii.The defence put forth by the respondent that the cheque has been issued for discharging loan availed by the wife of the respondent. Further, added, in order to rebut the evidence given by P.W.1, nobody was examined on the side of the respondent. Further, the probable defence taken by the respondent in the trial court had not been proved by means of evidence and exhibits. Without analysing those aspects, the trial court committed an error and pass an order of acquittal.

4.Now, on go through the submissions made by the counsel appearing for the appellant, it is true, on the side of the respondent, no witnesses could have been examined. Even though, the power of attorney produced along with the complaint is not marked as an exhibit. It is admitted by the respondent that the power of attorney had enclosed along with the complaint. In this aspect, it is necessary to see the judgment of our Honourable High Court in K.Gopalakrishnan Vs. Karunakaran reported in 2006 (2) MLJ (Cr1) 543 in which, it was held in para No.5 as follows: सत्यमेव जयते

15.Once the Power of Attorney agent makes the complaint, for all practical purposes, it is for the payee or holder in due course of the cheque and the Power of Attorney agent steps into the shoes of the payee or holder in due course of the cheque. Further, as held by the Supreme Court in Ravulu Subba Rao case (cited supra) with regard to the scope of Section 2 of the Powers of Attorney Act, whatever the person can do himself, he can do through an agent and when a person authorises another to sign for him, the signature of the person so signing is the signature of the person authorising it. In the light of the above discussion, we are of the view that it is not required to record the sworn affidavit of the complainant also on a future date to enable the

Court to exercise its discretion.

5. So, in the light of the above judgment, since the filing of the power of attorney is admitted by the respondent, the non-marking of the said document does not disprove the case of the appellant. So, the stand taken by the learned Magistrate for dismissing the complaint is erroneous one.

6. With regard to the second submission made by the appellant, it appears that during the time of examining the appellant as P.W.1, it was suggested by the respondent that the cheque has been issued for discharging loan availed by the wife of the respondent. In this connection, it is necessary to borne in mind that if a cheque have issued for discharging the legally enforceable debt is dishonored the offence u/s.138 N.I Act is attracted. Even, a guarantor issued a cheque in order to discharge the liability of the principle, it would amounts that the said cheque have been issued only in order to discharge the legally enforceable debt. Thereby issued the cheque by the respondent for discharging the liability of his wife amounts that the said cheque has been issued for legally enforceable debt.

7. More over, the said suggestion put by the respondent have not been proved by means of substantial evidence. Accordingly, I hold that dismissing the complaint by the Magistrate for the said two reasons is legally not sustainable. So, this appeal is allowed. This matter is remitted back to the learned Judicial Magistrate No.I, Coimbatore for awarding appropriate punishment given to the respondent in accordance with law.

mfa

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Coimbatore.

2.The Section Officer,
Crl.Section(Record Section),
High Court.

+1cc to M/s.C.R.Prasanan, Advocate Sr.No.29823

NRI (CO)
sm:14.5.2018

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