

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.A.No.785 of 2008

P.Murugesan

... Appellant/Complainant

Vs.

S.Elango,
S.o.Subrayan.

... Respondent/Accused

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the Judgment dated 16.09.2008 passed by the learned Judicial Magistrate No.V, Salem in C.C.No.651 of 2005, punish the accused in accordance with law and award compensation to the Appellant/Complainant equivalent to the cheque amounts.

For Petitioner : Mr.A.Velmurugan for
Mr.A.M.Amutha Ganesh

For Respondent : No appearance [Not ready in notice]

J U D G M E N T

This Criminal Appeal is filed to set aside the judgment dated 16.09.2008 passed by the learned Judicial Magistrate No.V, Salem in C.C.No.651 of 2005, punish the accused in accordance with law and award compensation to the Appellant/Complainant equivalent to the cheque amounts.

2.The appellant herein, who is the complainant had filed a private complaint under Section 138 of the Negotiable Instruments Act against the respondent/accused in C.C.No.651 of 2005.

3.The case of the complainant is that the respondent/accused, who is the proprietor of M/s.Karthika Chemicals, Salem had borrowed a sum of Rs.2,75,000/- from the complainant, for revamping and promoting his business, during April 2005. In order to discharge of his debt had issued five numbers of post dated cheques to the complainant and the details of the cheques are as follows:

SI. No.	Cheque dated	Cheque No.	Drawn on	Amount
1	20.05.2005	096463	Central Bank of India, Salem-1	50,000/-
2	10.06.2005	096464	Central Bank of India, Salem-1	50,000/-
3	01.07.2005	096465	Central Bank of India, Salem-1	50,000/-
4	20.07.2005	096466	Central Bank of India, Salem-1	50,000/-
5	10.08.2005	096467	Central Bank of India, Salem-1	75,000/-

4.The respondent promised that the cheques would be honoured on the respective dates mentioned in the cheques. On 20.05.2005, when the first cheque was due for encashment, the respondent/accused had informed the complainant that he needs time upto October, since his business was making a turn around and he would be in a position to make the payment as early as possible. Believing his representation the appellant had presented all the five cheques, which have become due from the time, during the first week of October.

5.The said cheques were not honoured and returned by the bankers of the respondent/accused on 14.10.2005 for the reason "Funds insufficient". Thereafter, statutory notice dated 14.10.2005 was caused to the respondent, who had avoided receipt of the same as could be seen from the endorsement from the postal cover dated 26.10.2005. Thereafter, the complaint came to be filed.

6.The appellant examined himself as PW.1 and through him Exs.P1 to P8 have been marked. The respondent examined one Krishnan, as DW.1, the Bank Manager of Central Bank of India and Ex.D1, the copy of the statement of accounts of the respondent, which are in the nature of formal evidence.

7.The Lower Court had acquitted the respondent on the ground that the appellant in his evidence had admitted that the drawer name in the cheques were filled up by the appellant and further, no statement of accounts had been produced by him to show the borrowings of the respondent that it is contemporarily relevant to be made in the Books of account of the appellant to show that the respondent had failed to repay the loan.

8.The contention of the respondent is that the respondent had not availed any loan and he had not given any cheque towards the discharge of the loan. Further, the finding of

cheques of the year 2004 to one Ekambaram and the said Ekambaram had handed over the cheques to the appellant and the appellant had filled up the same and had prosecuted him in the above case. Further, the Lower Court on a perusal of the cheques, in connection with the evidence of the appellant had come to a categorical finding that there have been corrections in the date of issuance of the cheques with regard to the year i.e. 2004 to 2005, which is found from the evidence of DW1. Further, to disprove the same no evidence had been let in by the appellant and further, it had observed that the corrections have been made in all the five cheques i.e. Exs.P1 to P5.

9. Further, the Lower Court had given a finding that on a perusal of the complaint and evidence, it is seen that no particulars are available, when and what manner the loan had been extended by the appellant to the respondent, on which basis the cheques Exs.P1 to P5 had been issued in discharge of liability in the above case and thereafter only the Lower Court had come to a conclusion on the material contradiction with regard to the filling up of the cheques and corrections of the date and by not producing any documents for the loan extended to the respondent had given a Judgment accepting the contention of the respondent and given a Judgment of acquittal.

10. The learned counsel for the petitioner vehemently opposed the finding of the Lower Court is perverse, in the absence of the accused getting into the box and disproving the case. The cheques were not issued in discharge of any liability of the accused. Merely relying upon the averments alone and also placed reliance on the Judgement of the Hon'ble Apex Court of India in the case of 2001 AIR SCW 4344 in the case of K.N.Beena Vs. Muniyappan and another.

11. On a perusal of the evidence and on the finding of the Lower Court, it has been admitted by the appellant that he had filled up the name of the respondent in the above cheques. He also admits that the correction of year mentioned in the cheques from 2004 to 2005 have been corrected in Exs.P1 to P5.

12. In the absence of producing Statement of Accounts to substantiate the claim of the appellant, the categorical case of the respondent is that he had not availed any loan from the appellant and Exs.P1 to P5 were not given by him in discharge of his liability and the cheques were given to one Ekambaram, which was misused by the appellant, this probablised the defence of the respondent to disprove the case against him.

13. Being satisfied with the explanation of the respondent coupled with the evidence and the finding of the Lower Court, this Court feels that the finding of the Lower Court need not be disturbed.

14.In fine, the Criminal Appeal filed by the appellant is dismissed. The Judgment of acquittal dated 16.09.2008 made in C.C.No.651 of 2005 passed by the learned learned Judicial Magistrate No.V, Salem is confirmed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.V,
Salem.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.M.Amutha Ganesh, Advocate Sr.No.52269

CA(CO)
sm:28.8.2018

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