IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl.A.No.796 of 2007

N.Balamani ... Appellant

Versus

Narayana Murthy ... Respondent

Criminal Appeal filed under Section 378 of Criminal Procedure Code, against the order of acquittal dated 20.06.2007 made in C.C.No.750 of 2003 passed by the learned Judicial Magistrate No.II, Tiruppur.

For Appellant : Mr.N.Manokaran
For Respondent : Mrs.T.Rama Devi
Legal Aid Counsel

J U D G M E N T

The complainant in C.C.No.750 of 2003 on the file of the Judicial Magistrate - II, Tiruppur, is the appellant herein. By Judgment dated 20.06.2007, the Court below acquitted the accused. Hence this appeal.

2. The learned counsel appearing for the appellant contended that the accused had borrowed a sum of Rs.1,50,000/- from the complainant on 09.11.2001 and that he also executed a promissory note for the said amount in favour of the complainant. He also agreed to repay the said amount with interest at the rate of 18% p.a. Towards the discharge of the liability, he issued the complaint cheque dated 25.02.2003 for a sum of Rs.1,80,000/- drawn on the Union Bank of India, Tiruppur Branch, in favour of the complainant. The said cheque was presented for collection on 30.07.2003 through Andhra Bank, Tiruppur Branch, but the same was returned as unpaid vide the bank returned memo on 31.07.2003. Thereafter, the complainant issued Ex.P5, statutory notice calling upon the accused to pay the cheque amount. After receipt of the same, the accused neither repaid the cheque amount nor issued any reply. Hence, the complainant filed the complaint in C.C.No.750 of 2003, before the Judicial Magistrate No.II, Tiruppur.

3. The complainant examined herself as P.W.1 and the Bank Manager was examined as P.W.2. Nine documents were marked as Exs.P1 to P9. The accused did not enter the witness box nor did he file any document.

4. The learned counsel appearing for the appellant reiterated the contention set out in the memorandum of an appeal and argued this appeal. Though notice was issued to the accused, he did not enter appearance. Therefore, this Court appointed Mrs.T.Rama Devi, the legal aid counsel to represent the accused. Thereafter the accused had entered appearance through counsel. Today, when the matter is taken up for hearing the counsel representing the counsel on record for the accused could not get along with the matter and sought time. Consequently, Mrs.T.Rama Devi, the counsel appointed through Legal Aid was entrusted with the case bundle and she argued the case and assisted this Court. Therefore, the Court is in a position to dispose of the appeal based on the assistance rendered by the legal aid counsel representing the accused.

5. As rightly contended by the learned counsel for the respondent, in the complaint itself, the appellant had stated that the Promissory Note was executed by the accused. The said Promissory Note was marked as Ex.P1. The complainant also admitted that it has been altered, but attestor of the Promissory Note has not been examined. More than anything else, in the cross-examination, the accused had suggested to the complainant that he did not sign the complaint cheque itself. In other words, he denied the execution of the complaint cheque. The complainant who examined herself as P.W.1 admitted that the signature in Ex.P1 Promissory Note and the signature in the complaint cheque Ex.P2 are different. When the discrepancies in the signature in the Promissory Note as well as the complaint cheque have been admitted by the complainant herself, it is incumbent on the part of the complaint to refer the signature under Ex.P2 for expert opinion. She has not done so. Therefore, as rightly pointed out by the learned counsel appearing for the respondent, the Court below rightly acquitted the accused.

6. The Court below in Paragraph 12 of the Judgment has stated that the attester was not examined on the side of the complainant. Thus the foundation of the transaction has not been established. The cheque in question was issued, according to the complainant, towards the liquidation of the loan liability. But loan transaction itself was not proved by the complainant.

The accused has disputed the signature in the Promissory Note and the complaint cheque. While so, the burden is on the complainant to prove that the signature in the Promissory Note and complaint cheque are one and the same.

7. It is also relevant to note that the complainant admitted in her deposition that her husband is running a finance company by name Krishna Finance. There was a suggestion put to the complainant that some cheques issued to her husband by the complainant has been misused by the complainant. When such a suggestion was made, to disprove the same, the husband of the complainant ought to have been examined, but the complainant did not do so. Therefore, taking into account all those circumstances, the court below acquitted the accused. Such an approach of the court below cannot be said to be irregular or perverse and consequently, there is no need to interfere with the order of acquittal passed by the Court below, which are based on factual findings. Hence, this Criminal Appeal is dismissed.

8. The Chairman, Tamil Nadu Legal Services Authority, Chennai is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand Only) to Mrs. Rama Devi, Legal Aid Counsel, towards her remuneration as per the norms prescribed by the Tamil Nadu State Legal Services Authority, within a period of 3 weeks from the date of receipt of copy of this order.

lpp

Sd/--
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

To
1) The Judicial Magistrate No.II,
Tiruppur.
2.The Chairman,
Tamil nadu Legal services Authority,
Chennai.
3. The section officer,
Criminal Section,
High court
Madras

+1cc to Mr.N.Manokaran , Advocate SR.No. 58496
+1cc to Mrs.T.Rama Devi , Advocate SR.No. 58231

Crl.A.No.796 of 2007

ASK(12/11/2018)