

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2018

CORAM :

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.NO.529 OF 2006

M/s.Shree Hambuja Roadways,
Partnership Firm,
represented by Partner
Mr.Ashok Kumar Jain,
thereafter and represented
by their Manager Mr.S.Ramachandran
122, Waltax Road,
Chennai - 600 003.

.. Appellant

Vs.

P.K.Sundaram
Proprietor,
M/s.Sri Jayalakshmi Lorry Service,
No.18, Acharappan Street,
Chennai - 600 001.

..Respondent

Prayer:

Criminal Appeal is filed under Section 378 of Cr.P.C., to set aside the judgment of the VIII Metropolitan Magistrate, George Town, Chennai made in C.C.No.2652/1998 dated 07.12.2005 by acquitting the accused for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

For Appellant : No appearance

For Respondent : No appearance

JUDGMENT

This appeal has been preferred by the complainant questioning the judgment of acquittal dated 07.12.2005 in C.C.No.2652 of 1998 on the file of VIII Metropolitan Magistrate, George Town, Chennai.

2. There is no representation on either side. This Court went through the records and proceeded to dispose of the matter for the mere reason that the cause of action dates back to 1998 and the judgment of the acquittal was pronounced in 2005.

3. This appeal is of the year 2006. More than 12 years have gone by. In these circumstances, no purpose will be served by keeping the appeal pending on the file of this Court.

4. The case of the complainant is that they are truck fleet owners and transport contractors. They purchased the lorry in question on October 1991. It was handed over to the accused for running the said vehicle on hire basis. In this regard, hire agreement was entered into on 20.06.1992. As per the agreement, the accused has to pay a sum of Rs.400/- per day towards hire charges. The accused committed default. The complainant called up the accused to come forward to produce the vehicle. The fitness certificate has to be obtained, but the accused evaded from doing so. He had however given the cheque for a sum of Rs.50,000/- dated 29.03.1995 which was dishonoured when presented for collection. Contending that the accused is punishable for offence under Sections 406 and 420 of IPC, the complainant registered a complaint in FIR in 638 of 1995 on the file of C-2, Elephant Gate Police Station. The police filed the closure report. Hence, the present petition was filed and the same was taken on file as private complaint in C.C.No.2652 of 1998 on the file of the court below. Ex.P1 to Ex.P10 were marked on the side of the accused. Ex.R1 were marked on the side of the defence. Oral evidence was also adduced on either side.

5. It is seen that this was not a solitary transaction between the parties and as many as 10 vehicles had been taken by the accused on a similar arrangement. The accused had also mortgaged his lands measuring an extent of 10 acres. There were serious disputes between the parties leading to filing of O.S.No.427 of 1996. The said proceedings ended in favour of the accused.

6. The essential ingredient of Section 420 IPC has not been satisfied in this case. In this case, the complainant had himself failed to establish that the accused had intention of dishonouring cheque at the inception. As already pointed out, it is not a case of solitary transaction. There are many other transactions between the complainant and the accused. In fact, the civil proceedings initiated by the complainant against the accused ended in favour of the accused. Therefore, the Court below rightly held that the offences of Sections 406 and 420 IPC cannot be set to have been made out.

7. The view taken by the Trial Court cannot be said to be incorrect or perverse and the Trial Court's order need not be interfered with. The complainant had preferred an FIR in the year 1995 and more than 23 years have gone by. Therefore, it would not be appropriate to reverse the order of acquittal at this point of time. When two views are possible, the Court has

to prefer the view which is in favour of the accused. There is no merit in this appeal. Hence, it is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msv

To

1. The VIII Metropolitan Magistrate,
George Town, Chennai.
2. Do Through The Chief Metropolitan Magistrate,
George Town, Chennai.
3. The Inspector,
The C2-Elephant Gate Police Station,
Crime Branch.

Crl.A.No.529 of 2006

RSI (CO)
CS/20/09/2019



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