



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

Coram

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRL. APPEAL No.595 of 2013

Somasundaram ... Appellant/Respondent/Complainant

Vs.

C. Krishnasamy
... Respondent/Appellant/Accused

Prayer: The Criminal Appeal has been filed under Section 378 of the Code of Criminal Procedure praying to set aside the order passed in C.A.No.2 of 2009 on the file of the Additional District and Sessions Judge, (FTC No.1), Coimbatore, dated 21.10.2009 reversing the judgment in C.C.No.686 of 2004 on the file of the Judicial Magistrate No.1, Udumalpet, dated 17.12.2008.

For Appellant : Mr.R. Babu
for Mr.S. Gunalan

For Respondent : Mr.N.Umapathi

J U D G M E N T

The case of the appellant is that on 13.03.2004, the respondent borrowed a sum of Rs.11,60,000/- from him. The respondent promised to repay the said amount within a period of 20 days and he issued a cheque dated 02.04.2004, bearing No.538399 to the appellant. The appellant presented the cheque for encashment. The said cheque was returned with the endorsement ''insufficient funds''. Thereafter, the appellant issued notice to the respondent on 21.07.2004 and the respondent received the said notice dated 28.07.2004 and after receipt of the said notice, he neither repaid the money as demanded by the appellant in the notice, nor he has sent any reply. Thereafter, the appellant filed a petition for offence under Section 138 of Negotiable Instrument Act, before the learned Judicial Magistrate No.1, Coimbatore. After completing the legal formalities, the learned Magistrate has taken the case on file in CC. No.686 of 2004. The learned Magistrate gave sufficient time to both the parties and after trial, the learned Magistrate convicted the respondent for offence under Section 138 of Negotiable Instruments Act and ordered him to pay fine of



Rs.3,000/-, in default, to serve one month simple imprisonment.

2. Challenging the said judgment of conviction and sentence, the respondent preferred an appeal before the learned Additional District Sessions Judge/FTC No.1, Coimbatore. The learned Additional District Sessions Judge, Coimbatore has taken the Criminal Appeal on file in C.A.No.2 of 2009 and in turn made it over to the Additional Sessions Judge (FTC No.1) Coimbatore. The Appellate Court after giving an opportunity to both the counsel, reversed the judgment passed by the learned Magistrate No.1, Coimbatore and allowed the appeal and acquitted the respondent herein. Challenging the said judgment, the appellant has filed the present appeal before this Court.

3. The learned counsel for the appellant would submit that on 13.03.2004, the respondent borrowed a sum of Rs.11,60,000/- from him. The respondent promised to repay the said amount within a period of 20 days and issued a cheque dated 02.04.2004, bearing No.538399 to the appellant. The appellant presented the cheque for encashment. The said cheque was returned with an endorsement 'insufficient funds'. Thereafter, the Appellant sent statutory notice to the respondent. However, the respondent has not sent any reply or repaid the amount, hence, the appellant lodged a complaint before the learned Judicial Magistrate No.I, Coimbatore for the offence under Section 138 of Negotiable Instrument Act. The trial Court rightly consider the aspects that the respondent has not denied the signature found in the cheque. The first Appellate court without considering the above findings wrongly reversed the judgment of the Magistrate and allowed the appeal by acquitting the respondent. Hence, the present appeal is before this Court.

4. The learned counsel for the respondent would submit that there was no transaction between the appellant and the respondent. The learned Counsel has raised two main grounds in support of his arguments. The first ground is that such a huge amount of Rs.11,60,000/- as loan, no person will lend without any documentary proof. In this case, the appellant has not shown even a single piece of paper to show that he has lent money to the respondent. The second ground is that when statutory notice is issued, it should be sent only through registered post. There is no evidence to show that any such notice was sent to the respondent through registered post. In the absence of these two vital evidence, the appellant cannot claim that he has lent money to the respondent. According to the learned counsel there was a transaction between one Nagaraj and the respondent, for a loan of Rs.1,15,000/-, for which the respondent had issued blank cheques to the said Nagaraj and those cheques were misused by the appellant.



5. Heard the learned counsel on either side and perused the entire documents.

6. It is the case of the appellant that the respondent borrowed a sum of Rs.11,60,000/- from him with a promise to repay the same within a period of 20 days. On presentation, the cheque issued by the respondent was returned with an endorsement ''insufficient funds''. The Appellant had contended that he has sent statutory notice to the respondent. However, the respondent has not sent any reply or repaid the amount. Therefore, he has lodged a complaint before the learned Judicial Magistrate No.I, Coimbatore.

7. The learned Magistrate had appreciated the evidences and convicted the respondent and ordered him to pay a fine of Rs.3,000/-, in default, undergo simple imprisonment for one month. The appeal preferred by the respondent was considered favourably by the Appellate Court and judgment of conviction was set-aside. This Court agrees with arguments put forth by the learned counsel for the respondent, if at all the appellant had given a huge amount of Rs.11,60,000/- as loan to the respondent, certainly there should be some documentary proof to prove the same. The appellant has not given a piece of paper in support of his case. Likewise, the Negotiable Instrument Act mandates that statutory notice should be sent only through registered post, once again, the appellant has not produced any proof to show that the notice was sent through the registered post.

8. Therefore, the judgment of the appellate Court is upheld and the Criminal appeal filed by the appellant/complainant is dismissed. The order of acquittal passed by the learned Additional District Sessions Judge/FTC No.1, Coimbatore in CC. No.2 of 2009, dated 21.10.2009 is hereby confirmed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge, (FTC No.1), Coimbatore.
2. The Judicial Magistrate No.1, Udumalpet.



Copy to

The Section officer
Criminal Section
High Court, Madras 104.

WEB COPY

+1 CC to Mr.S. Gunalan, Advocate sr 59591.

+1 CC to Mr.N.Umapathi, Advocate sr 59268

CRL. A. No.595 of 2013

SSV(CO)

SP(27/11/2018)