IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.1705 of 2003

M/s.Home Finders Housing Limited,
Represented by its Chairman and Managing Director,
K.S.Ramalingam,
Race View Tower,
71, Anna Salai, Guindy,
Chennai - 600 032. ... Appellant/Complainant

Vs

M.V.Salaiabaranam ... Respondent/Accused

Prayer: Criminal Appeal filed under Section 378 of the Criminal Procedure Code, against the judgment of acquittal dated 13.10.2003 made in C.C.No.3405 of 2000 on the file of the Court of the XVII Metropolitan Magistrate, Saidapet, Chennai and submits the same is liable to be set aside.

For Appellant : Mr.K.S.Natarajan

For Respondent : Mr.Jerry V.V.Sundar
Legal Aid Counsel

JUDGMENT

This criminal appeal is preferred by the appellant/complainant against the order of acquittal passed by the learned XVII Metropolitan Magistrate, Saidapet, Chennai made in C.C.No.3405 of 2000 dated 13th October 2003.

2.Brief case of the appellant:

The case of the appellant/complainant is that the respondent/accused borrowed sum of Rs.1,00,000/- on 17.1.1997 and issued a post-dated cheque bearing No.433159 dated 23.10.1999 drawn on Central Bank of India, Thiyagaraya Nagar,Chennai. The appellant deposited the said cheque for collection at Indian Bank, Saligramam Branch, Chennai on 23.10.1999, but the same was dishonoured with return memo on 25.10.1999 noted with "insufficient funds". The appellant/complainant issued statutory legal notice to the respondent/accused on 5.11.1999 and the same was received on 6.11.1999 by the respondent and he failed to repay the loan amount. Hence the appellant filed complaint before the trial Court.

3.During the trial, the appellant/complainant examined PWs-1 to 3 and Exhibits P1 to 7 was marked. The respondent examined himself as DW1 and another witness DW2 and Exhibits-D1 and D2 were marked.

4.On completion of the trial, the learned trial Court acquitted the respondent /accused by holding that the appellant/complainant failed to prove the offences under section 139 of the Negotiable Instrument Act. Aggrieved over the acquittal, the appellant filed this criminal appeal.

5.I heard Mr.K.S.Natarajan, learned counsel for the appellant and Mr.Jerry V.V.Sundar, learned Legal Aid Counsel for the respondent and perused the entire materials available on record.

6.The learned counsel for the appellant submits that the learned Magistrate has erred in ignoring that there are two presumptions under the Negotiable Instruments Act, one under section 118 of the other under sections 138 and 139 of Negotiable Instrument Act, which create a statutory presumption is in favour of the complainant to the effect that the cheque was issued for consideration. Once such presumption is raised, the onus shifts to the accused to prove/let in evidence that the cheque was not issued for consideration.

7.The learned counsel for the appellant submits that the learned Magistrate has erred that the complainant had not filed any document to prove that the cheque was issued by the accused only for discharging the debt. The Learned Magistrate ignored the rule that the initial presumption is infavour of the complainant and the onus of proof that the cheque was not for consideration squarely rests on the accused.

8.The learned Legal Aid counsel appeared for the respondent and supported the findings of the trial Court.

9.It is seen from the records that the respondent/accused received the loan amount of Rs.1 Lakh from the public limited company, the appellant herein. There is no material reason adduced by the appellant regarding the transaction made with the respondent/accused. The company of the appellant was registered and incorporated under the companies' act making flat promotion activities and completed housing projects. The respondent/accused in his evidence denied the averments of PW 1 and raised the presumption under section 139 of the Negotiable Instrument Act.

10.It is to be borne in mind that, in the cheque cases the presumption under section 118 creates the statutory presumption in favour of the complainant to the effect that the cheque was issued for consideration. Apart from that, the issue is whether the impugned cheque was issued for legally enforceable debt. On reading the evidences, this Court cannot accept the grounds raised by the appellant since the same was not supported with documents to prove the offence under section 138 of the Negotiable Instruments Act. The learned trial Court rightly disbelieved the evidences which cannot be disturbed in this appeal.

11.In the result, this criminal appeal is dismissed and the order passed in C.C.No.3405 of 2000, dated 13.10.2003, on the file of the Court of the XVII Metropolitan Magistrate, Saidapet, Chennai, is confirmed.

12.The Legal Aid Authority attached to this Court is directed to pay a sum of Rs.3000/- to Mr.Jerry V.V.Sundar, Legal Aid Advocate.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The XVII Metropolitan Magistrate,
   Saidapet, Chennai.

2. The Chief Metropolitan Magistrate,
   Egmore, Chennai (for information)

3. Mr.Jerry V.V.Sundar,
   No.12/28 SMJ.Parrys Plaza, 3rd Floor,
   Door No.3-D1, Second Line Beach Road,
   Chennai-1.

4. The Secretary,
   Tamil Nadu Legal Services Authority/
   High Court Legal Services Committee,
   Chennai.

5. The Section Officer,
   Criminal Section,
   High Court, Madras.

+1 cc to M/s.K.S.Natarajan, Advocate Sr.No.40295

Criminal Appeal No.1705 of 2003

AD(CO)
CSL/20.02.2019